in any way would restrict private enterprise.

I say on this floor that I will do as much as will the Senator from Minnesota in getting legislation, if he wants to go into that matter, to prevent monopoly, and I have a record of 7 years of working for the small-business men of this country, and I will stake my case on what I have done in those 7 years. I say now that the failure to secure action on the particular bill the Senator is talking about is a disgrace. A conference should have been had on it. We should have agreed to the report, and put at rest the confusion in which we now find ourselves, which is making an issue of absorption of freight, resulting in constriction of territory in which business cannot continue to exist.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. WHERRY. I yield.

Mr. HUMPHREY. Does the Senator support the Carroll amendment to House bill 1008? I ask the question on the basis that all the small-business organizations of America, including such organizations as the National Association of Retail Druggists, are in support of the Carroll amendment. I wonder how the Senator stands on the Carroll amendment.

Mr. WHERRY. I will tell the Senator exactly how I stand on it. I would go along with the distinguished Senator from Minnesota and completely eliminate section 3, which has to do mostly with what the Senator is talking about. But on the question of freight absorption, I think the Carroll amendment nullifies the Kefauver amendment, and if adopted, it will nullify the provision entirely so we will not know where we are.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. WHERRY. Wait a minute. Let me finish.

The PRESIDING OFFICER. The Senator from Nebraska declines to yield.

Mr. WHERRY. No; I am not going to refuse to yield, but I should like to finish my statement, if I may. The Senator wants to put words in my mouth. I certainly am not for the Carroll amendment as an amendment to the Kefauver amendment in the second section of the bill, because if that amendment is adopted, it will leave us just where we now are. Does the Senator from Minnesota agree with that statement?

Mr. HUMPHREY. The Senator from Minnesota would merely say to the Senator from Nebraska that he is for the Carroll amendments as they are written.

The PRESIDING OFFICER. The Chair will be obliged to declare Senators out of order if they do not abide by the rules.

Mr. WHERRY. Mr. President, the Senator from Minnesota refuses to answer my question. So I shall now endeavor to conclude once again.

The PRESIDING OFFICER. The Senator from Nebraska has no right to ask the Senator from Minnesota a question.

Mr. WHERRY. That is correct, Mr. President. I do not want to breach the rules. The Senator from Kentucky has been an excellent Presiding Officer.

The PRESIDING OFFICER. The Chair is merely trying to keep Senators within the rules.

Mr. WHERRY. Mr. President, I want to conclude with this final statement: There are those who talk about economy who do not vote their convictions. That certainly has been demonstrated by the record of the majority leader and that of the junior Senator from Minnesota.

Mr. President, I yield the floor.

Mr. HUMPHREY. Mr. President, I desire to make a comment on the Senator's statement before we conclude the session. I feel it is only a matter of personal privilege for the junior Senator from Minnesota to try to set at ease the mind of the distinguished minority leader by saying that his political faith is that of a Democrat and not that of a Socialist. His economic philosophy is that of a free enterpriser, and not that of a monopolist. I do not speak only on the basis of theory, but I speak from experience. I am sure many of my distinguished colleagues are participants in the business community. I have always pointed with pride to the fact that my business experience has been in a corner drugstore, in which business I am a partner.

I stand in defense of American liberties. I stand for the defense of true free enterprise in this country, free from monopolies. That is my faith.

Mr. WHERRY rose.

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Nebraska?

Mr. WHERRY. No, Mr. President, I wish to speak after the Senator shall have concluded.

RECESS

Mr. HUMPHREY. Since the business of the Senate is pretty well concluded for today, in the absence of the majority leader, I, as acting majority leader now move that the Senate take a recess until 12 o'clock noon tomorrow.

Mr. WHERRY. I do not object.

The PRESIDING OFFICER. The question is on the motion of the Senator from Minnesota.

The motion was agreed to, and (at 7 o'clock and 15 minutes p. m.) the Senate took a recess until tomorrow, Tuesday, August 30, 1949, at 12 o'clock meridian.

SENATE

TUESDAY, AUGUST 30, 1949

(Legislative day of Thursday, June 2, 1949)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Rev. Bernard Braskamp, D. D., pastor of the Gunton-Temple Memorial Presbyterian Church, Washington, D. C., offered the following prayer:

Most merciful and gracious God, in this moment of sacred communion we are praying for ourselves and for one another, seeking together those blessings which none can ever find or enjoy alone.

May we daily live among our fellow men as the messengers and mediators of helpfulness and hopefulness. May our character and conduct be to others a source of strength and encouragement.

Grant that we may have more of the mind and mood of the Master which alone can bridge the chasms that divide the members of the human family.

We live in one world; make us one in spirit. Show us how our declarations of interdependence and oneness with all mankind may become a blessed reality.

In Christ's name we bring our petitions. Amen.

THE JOURNAL

On request of Mr. LUCAS, and by unanimous consent, the reading of the Journal of the proceedings of Monday, August 29, 1949, was dispensed with.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries, and he announced that the President had approved and signed the following acts:

On August 27, 1949:

S. 259. An act to discontinue divisions of the court in the district of Kansas.

On August 29, 1949:

S. 1962. An act to amend the cotton and wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended; and

S. 2391. An act to authorize the construction, operation, and maintenance of the Weber Basin reclamation project, Utah.

MESSAGE FROM THE HOUSE—ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

A message from the House of Representatives, by Mr. Swanson, one of its reading clerks, announced that the Speaker pro tempore had affixed his signature to the following enrolled bills and joint resolutions, and they were signed by the Vice President:

S. 936. An act to provide for the care and custody of insane persons charged with or convicted of offenses against the United States, and for other purposes;

S. 973. An act to exempt from taxation certain property of the National Society of the Colonial Dames of America in the District of Columbia;

S. 1250. An act extending the Institute of Inter-American Affairs;

S. 1859. An act to transfer from the Administrator of Veterans' Affairs to the Attorney General of the United States for the use of the Bureau of Prisons, a certain tract of land located at Chillicothe, Ohio;

S. 2146. An act to provide certain additional rehabilitation assistance for certain seriously disabled veterans in order to remove an existing inequality;

S. 2298. An act to authorize the Administrator of Veterans' Affairs to convey certain lands and to lease certain other land to Milwaukee County, Wis.;

H. R. 225. An act to repeal section 460 of the act of March 3, 1899 (30 Stat. 1336), as amended, providing for certain license taxes in the Territory of Alaska;

H. R. 632. An act for the relief of John E. Burns;

H. R. 807. An act for the relief of Chattooga County, Ga.;

H. R. 1065. An act for the relief of the estate of James Lander Thomas;

H. R. 1132. An act for the relief of Mabel H. Slocum;

H. R. 1446. An act for the relief of Conrad L. Wirth;

H. R. 1631. An act for the relief of John J. O'Mara;

H. R. 1701. An act for the relief of Mrs. Vesta Mainn and Mrs. Edna Williams;

H. R. 1790. An act to restore certain land in Alaska to the public domain and to authorize its sale to Ford J. Dale, of Fairbanks, Alaska;

H. R. 1792. An act for the relief of Charles E. Ader;

H. R. 1979. An act for the relief of Soo Hoo Yet Tuck;

H. R. 2091. An act for the relief of Jack McCollum;

H. R. 2170. An act authorizing changes in the classification of Crow Indians;

H. R. 2471. An act for the relief of Wait W. Rostow;

H. R. 2475. An act to authorize and direct the Secretary of the Interior to sell to Albert M. Lewis, Jr., certain land in the State of Florida;

H. R. 2594. An act for the relief of Grace L. Elser;

H. R. 2628. An act for the relief of Auldon Albert Aiken;

H. R. 2702. An act to authorize the Secretary of the Army to convey by quitclaim deed certain mineral rights in certain lands situated in the State of Oklahoma to Alfred A. Drummond and Addie G. Drummond;

H. R. 2706. An act authorizing the issuance of a patent in fee to Susie Larvie Dillon;

H. R. 2920. An act authorizing the issuance of a patent in fee to George Swift Horse;

H. R. 3071. An act to authorize the Secretary of the Army to purchase certain property in Morgan County;

H. R. 3197. An act relating to the sale of the old Louisville Marine Hospital, Jefferson County, Ky.;

H. R. 3383. An act to provide that extra compensation for night work paid officers and employees of the United States shall be computed on the basis of either standard or daylight-saving time;

H. R. 3478. An act to extend the time of completing the construction of a bridge across the Mississippi River at or near a point between Delmar Boulevard and Cole Street in the city of St. Louis, Mo., and a point opposite thereto in the city of East St. Louis, Ill.;

H. R. 3589. An act to convey to the city of Miles City, State of Montana, certain lands in Custer County, Mont., for use as an industrial site;

H. R. 3637. An act to permit the sending of braille writers to or from the blind at the same rates as provided for their transportation for repair purposes;

H. R. 3665. An act for the relief of Mrs. Josephine Wagnon Walker;

H. R. 3667. An act authorizing the Secretary of the Interior to issue a patent in fee to Lenora Farwell Fritzler;

H. R. 3768. An act for the relief of Mrs. Justa G. Vda. de Guido, Belen de Guido, Mulia de Guido, and Oscar de Guido;

H. R. 3803. An act for the relief of Mrs. Mary L. W. Dawson;

H. R. 3829. An act to provide assistance for local school agencies in providing educational opportunities for children on Federal reservations or in defense areas, and for other purposes;

H. R. 3837. An act for the relief of Annie Balaz;

H. R. 3881. An act to provide for the use of the State course of study in schools operated by the Bureau of Indian Affairs on Indian reservations in South Dakota when requested by a majority vote of the parents of the students enrolled therein;

H. R. 4026. An act relating to the exchange of certain private and Federal properties within the authorized boundaries of Acadia National Park, in the State of Maine, and for other purposes;

H. R. 4073. An act to provide for the conveyance to the State of New York of certain historic property situated within Fort Niagara State Park, and for other purposes;

H. R. 4208. An act to add certain surplus land to Petersburg National Military Park, Va., to define the boundaries thereof, and for other purposes;

H. R. 4254. An act authorizing the Secretary of the Interior to issue a patent in fee to Sidney Blackhair;

H. R. 4688. An act to ratify and confirm Act 4 of the Session Laws of Hawaii, 1949, extending the time within which revenue bonds may be issued and delivered under chapter 118, Revised Laws of Hawaii, 1945;

H. R. 5155. An act for the relief of Francesca Lucareni, a minor;

H. R. 5160. An act for the relief of Mrs. Giustina Schiano Lomoriello;

H. R. 5205. An act to quitclaim certain property in Enid, Okla., to H. B. Bass;

H. R. 5207. An act to amend section 50 of the Organic Act of Puerto Rico;

H. R. 5390. An act to authorize the Secretary of the Interior to exchange certain Navajo tribal Indian land for certain Utah State land;

H. R. 5535. An act to amend the Philippine Rehabilitation Act of 1946;

H. R. 5620. An act permitting the use for public purposes of certain land in Hot Springs, N. Mex.;

H. R. 5929. An act to amend the Army and Air Force Vitalization and Retirement Equalization Act of 1948;

S. J. Res. 109. Joint resolution to amend the National Housing Act, as amended;

H. J. Res. 281. Joint resolution to authorize the President to issue posthumously to the late John Sidney McCain, vice admiral, United States Navy, a commission as admiral, United States Navy, and for other purposes; and

H. J. Res. 338. Joint resolution to authorize the Administrator of Civil Aeronautics to undertake a project under the Federal Airport Act for the development and improvement of Logan International Airport at Boston, Mass., during the fiscal year 1950.

CALL OF THE ROLL

Mr. LUCAS. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hill	Myers
Anderson	Hoey	Neely
Brewster	Holland	O'Conor
Bridges	Humphrey	O'Mahoney
Butler	Ives	Pepper
Byrd	Johnson, Tex.	Reed
Capehart	Johnston, S. C.	Robertson
Chapman	Kefauver	Saltonstall
Chavez	Kem	Schoeppel
Connally	Kerr	Smith, Maine
Cordon	Kilgore	Smith, N. J.
Donnell	Knowland	Sparkman
Douglas	Langer	Stennis
Dulles	Leahy	Taft
Eastland	Long	Taylor
Ecton	Lucas	Thomas, Okla.
Ellender	McCarthy	Thomas, Utah
Flanders	McClellan	Thye
Frear	McFarland	Tobey
Fulbright	McKellar	Tydings
George	McMahon	Vandenberg
Gillette	Magnuson	Watkins
Graham	Malone	Wherry
Green	Martin	Wiley
Gurney	Miller	Williams
Hayden	Millikin	Withers
Hendrickson	Mundt	Young
Hickenlooper	Murray	

Mr. MYERS. I announce that the Senator from California [Mr. DOWNEY] is necessarily absent.

The Senator from Wyoming [Mr. HUNT] is absent by leave of the Senate on official business.

The Senator from Colorado [Mr. JOHNSON], the Senator from South Carolina [Mr. MAYBANK], the Senator from Nevada [Mr. MCCARRAN], and the Senator from Georgia [Mr. RUSSELL] are absent by leave of the Senate.

Mr. SALTONSTALL. I announce that the Senator from Connecticut [Mr. BALDWIN] is absent by leave of the Senate on official business.

The Senator from Ohio [Mr. BRICKER] and the Senator from Indiana [Mr. JENNER] are necessarily absent.

The Senator from Washington [Mr. CAIN], the Senator from Michigan [Mr. FERGUSON], and the Senator from Massachusetts [Mr. LODGE] are absent by leave of the Senate.

The Senator from Oregon [Mr. MORSE] is absent on official business.

The VICE PRESIDENT. A quorum is present.

TRANSACTION OF ROUTINE BUSINESS

The VICE PRESIDENT. Without objection, the Chair will recognize Senators for the transaction of routine business, without debate.

WEBER BASIN RECLAMATION PROJECT, UTAH—STATEMENT BY THE PRESIDENT

The VICE PRESIDENT. The Chair has received a communication from the President, including a statement issued on the occasion of his signature and approval of Senate bill 2391, authorizing the construction, operation, and maintenance of the Weber Basin reclamation project in Utah. Without objection, the statement of the President will be printed in the RECORD. The Chair hears no objection.

The statement is as follows:

AUGUST 30, 1949.

STATEMENT BY THE PRESIDENT

I have approved S. 2391, to authorize the construction, operation, and maintenance of the Weber Basin reclamation project, Utah.

This bill will authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct, operate, and maintain the Weber Basin project for the purposes of supplying irrigation water to 70,000 acres of new lands and supplemental water to 30,000 acres of land now inadequately irrigated; supplying municipal, industrial, and domestic water; controlling floods; generating and selling electricity; and for other beneficial purposes.

I have signed this bill with reluctance because it was enacted without following the normal procedures for obtaining full information and adequate review concerning irrigation projects before authorization. The bill appears to have been enacted on the basis of the information contained in a preliminary report of the regional director of the Bureau of Reclamation. This report had not been reviewed by other interested agencies or by the Executive Office. So far as I know, there has been no final report on the project by the Secretary of the Interior or the Commissioner of Reclamation.

The enactment of this bill under these circumstances raises a number of serious questions. These questions are raised

because there has not been sufficient opportunity to review the adequacy of the data contained in the report of the regional director, and because the bill represents in some respects basic departures from the established reclamation law.

I have given my approval to the bill only because I am convinced, after careful study and after discussions with several Members of Congress from Utah, that the project is basically sound and that it will be possible to overcome the most serious difficulties arising from the lack of adequate consideration before the project was authorized.

The provisions of the bill which appear to be most questionable are as follows:

1. It authorizes the repayment of irrigation water supply costs over a period of 60 years instead of the period of 40 years which has prevailed heretofore under the reclamation law.

2. The project report of the regional director contemplates a nonreimbursable allocation of cost in the amount of $4,656,000 for recreation. The allocation of cost to recreational facilities is not now authorized under reclamation law. If the allocation authorized in connection with the project were uniformly applied as a precedent, it would ultimately involve the Government in the expenditure of hundreds of millions of dollars.

3. Under the proposed repayment plan for the project, the amounts repaid by municipal and industrial users would be applied first to the repayment of the cost allocated to municipal and industrial purposes, and then to the repayment of part of the cost allocated to irrigation—all of this on a basis which would provide total revenues over a period of 60 years sufficient only to cover the total reimbursable cost without interest. Thus, in addition to receiving no interest on the reimbursable irrigation cost, the Government would also receive no interest on the reimbursable cost for municipal and industrial uses.

4. The report on the project was not referred to the Department of the Army for review and comment by the Chief of Engineers in accordance with the provisions of section 1 of the Flood Control Act of 1944. Consequently, the Corps of Engineers has had no adequate opportunity to consider the phases of the project in which it is interested. On the basis of such study as he has had time to make, however, the Chief of Engineers raises serious questions as to the amount allocated for flood control.

5. The report on the project was not made available to the Department of Agriculture. Consequently, it has not been possible for that Department to express its views with regard to the agricultural and economic feasibility of the proposed plan.

There is no urgency for immediate construction of the Weber Basin project. In fact, the plans of the Bureau of Reclamation call for construction to be spread over a period of 12 years. I believe, therefore, that the objections to the present authorization can, for the most part, be eliminated—some of them by future action of the Congress, and some by the exercise of the discretion which the bill fortunately permits.

The bill does not commit the Secretary of the Interior to the cost allocations made in the report of the regional director. It is flexible enough to permit an apportionment of the cost on an equitable and sound basis consistent with the facilities and system of operation finally adopted for the project. The construction of the proposed recreational facilities can be postponed until such time as the Congress has enacted basic standards for the allocation of costs to recreational purposes in connection with reclamation projects. The questions of proper allocation of flood control benefits and construction costs can be resolved between the Secretaries of the Interior and the Army. Additional information concerning the ability of water users to repay the costs of irrigation features of the project can be developed in consultation with the Department of Agriculture. The questions of a 60-year repayment period and interest on the reimbursable costs for municipal and industrial water users will be reconsidered when a complete study of this project is available.

For the foregoing reasons, I am directing the Secretary of the Interior to take the following steps: To complete his study of this project and submit a final report; to defer initiation of construction of any of the recreational facilities pending determination of a national policy on recreation at water resources development projects; to work out with the Department of the Army a sound flood control plan and cost allocations; to consult with the Department of Agriculture on the ability of the water users to repay the costs of the irrigation features; to make such other adjustments in the plans, estimates, cost allocations and repayment obligations as may be required on the basis of the above and the data which will become available when detailed surveys, engineering designs and refined estimates are completed; and to defer final negotiations on any repayment contracts with the water users until definite repayment amounts and conditions are settled.

I do not intend to submit any requests for construction appropriations until the above preparation has been accomplished and it is known as surely as possible what is going to be done, how much it will cost, how much is going to be repaid and when. It would seem that this plan for proceeding with the Weber Basin project is only fair to the water users who will eventually have to return to the United States the investment allocated to irrigation and municipal water supplies.

I have always favored a sound water resources development program and the authorization of additional projects as needs arise and as they are found to be justified. I consider it essential that the program be not jeopardized by premature authorization of projects in advance of resolution of questionable features. To do so may lead to unsound action which will endanger the success of our whole reclamation program.

Approved August 29, 1949.

HARRY S. TRUMAN.

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following communication and letters, which were referred as indicated:

REVISED SUPPLEMENTAL ESTIMATE, PAYMENT OF CLAIMS AND JUDGMENTS (S. DOC. NO. 111)

A communication from the President of the United States, transmitting a revised supplemental estimate of appropriation, involving an increase of $465,694.10, for the payment of claims and judgments (with accompanying papers); to the Committee on Appropriations and ordered to be printed.

REPORT ON DEVELOPMENT OF WATER AND RELATED RESOURCES, CENTRAL VALLEY, CALIF.

A letter from the Secretary of the Interior, transmitting, pursuant to law, a report and findings of the Department of the Interior on a comprehensive plan for development of the water and related resources of the Central Valley of California (with accompanying papers); to the Committee on Interior and Insular Affairs.

DEPARTMENT OF MEDICINE AND SURGERY IN VETERANS' ADMINISTRATION

A letter from the Deputy Administrator of Veterans' Affairs, transmitting a draft of proposed legislation to amend the act entitled "An act to establish a Department of Medicine and Surgery in the Veterans' Administration," approved January 3, 1946, as amended, to extend the period for which employees may be detailed for training and research, and for other purposes (with an accompanying paper); to the Committee on Labor and Public Welfare.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate and referred as indicated:

By the VICE PRESIDENT:

A resolution adopted by the Maui Lions Club, of Wailuku, Maui, T. H., favoring the enactment of House bill 199, to provide the privilege of becoming a naturalized citizen of the United States to all immigrants having a legal right to permanent residence and to make immigration quotas available to Asian and Pacific peoples; to the Committee on the Judiciary.

A resolution adopted by the Junior Order United American Mechanics, State Council of Kentucky, Covington, Ky., protesting against the enactment of legislation providing an increase in the number of displaced persons to be admitted into the United States; to the Committee on the Judiciary.

A petition of sundry citizens of the State of New York, praying for the enactment of Senate bill 2115, to authorize payments by the Administrator of Veterans' Affairs on the purchase of automobiles or other conveyances by certain disabled veterans, and for other purposes; to the Committee on Labor and Public Welfare.

A letter in the nature of a memorial from the Pacific County Medical Society, signed by A. G. Dalinkus, secretary-treasurer, remonstrating against the enactment of legislation providing compulsory health insurance; to the Committee on Labor and Public Welfare.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, August 30, 1949, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 936. An act to provide for the care and custody of insane persons charged with or convicted of offenses against the United States, and for other purposes;

S. 973. An act to exempt from taxation certain property of the National Society of

the Colonial Dames of America in the District of Columbia;

S. 1250. An act extending the Institute of Inter-American Affairs;

S. 1859. An act to transfer from the Administrator of Veterans' Affairs to the Attorney General of the United States for the use of the Bureau of Prisons, a certain tract of land located at Chillicothe, Ohio;

S. 2146. An act to provide certain additional rehabilitation assistance for certain seriously disabled veterans in order to remove an existing inequality;

S. 2298. An act to authorize the Administrator of Veterans' Affairs to convey certain lands and to lease certain other land to Milwaukee County, Wis.; and

S. J. Res. 109. Joint resolution to amend the National Housing Act, as amended.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. JOHNSTON of South Carolina, from the Committee on Post Office and Civil Service:

Sundry postmasters.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FLANDERS (by request):

S. 2509. A bill to improve financial control and audit of the Post Office Department, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. MURRAY:

S. 2510. A bill to authorize and direct the Secretary of the Interior to issue to Anson Harold Pease, a Crow allottee, a patent in fee to certain lands; to the Committee on Interior and Insular Affairs.

By Mr. BYRD:

S. 2511. A bill for the relief of Dr. John R. Portaria; to the Committee on the Judiciary.

By Mr. CHAVEZ (for himself and Mr. ANDERSON):

S. 2512. A bill to authorize the construction, operation, and maintenance of the Vermejo reclamation project, New Mexico; to the Committee on Interior and Insular Affairs.

By Mr. WILEY:

S. 2513. A bill to give a short title to the act of July 1, 1898, commonly known as the Bankruptcy Act; to the Committee on the Judiciary.

By Mr. CHAPMAN:

S. 2514. A bill for the relief of Gertrude Hancock, administratrix of the estate of Arch F. Hancock; to the Committee on the Judiciary.

By Mr. JOHNSTON of South Carolina:

S. 2515. A bill to provide a fidelity trust fund in the Post Office Department, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. KEFAUVER:

S. 2516. A bill relating to education or training of veterans under title II of the Servicemen's Readjustment Act, as amended; to the Committee on Labor and Public Welfare.

AMENDMENT OF CIVIL SERVICE RETIREMENT ACT—AMENDMENT

Mr. HILL submitted an amendment intended to be proposed by him to the bill (H. R. 5465) to amend section 4 (e) of the Civil Service Retirement Act of May 29, 1930, as amended, which was ordered to lie on the table and to be printed.

MINIMUM-WAGE STANDARD—AMENDMENTS

Mr. HUMPHREY and Mr. KEFAUVER each submitted an amendment intended to be proposed by them, respectively, to the bill (S. 653) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes, which were ordered to lie on the table and to be printed.

Mr. FULBRIGHT submitted amendments intended to be proposed by him to Senate bill 653, supra, which were ordered to lie on the table and to be printed.

Mr. McCLELLAN (for himself, Mr. STENNIS, and Mr. GEORGE) submitted two amendments intended to be proposed by them, jointly, to Senate bill 653, supra, which were ordered to lie on the table and to be printed.

ADDRESS BY SENATOR ANDERSON AT DEMOCRATIC OUTING NEAR HAMILTON, OHIO

[Mr. MAGNUSON asked and obtained leave to have printed in the RECORD an address delivered by Senator ANDERSON at the annual Democratic outing at LeSourdsville Lake, near Hamilton, Ohio, on August 28, 1949, which appears in the Appendix.]

APPEAL BY SENATOR WILEY FOR CONTINUED USE OF BUTTER BY THE ARMED SERVICES

[Mr. WILEY asked and obtained leave to have printed in the RECORD a letter addressed by him to the Acting Quartermaster General urging the continued purchase of butter for the use of the armed services, which appears in the Appendix.]

THE DOLLAR AND THE POUND—ARTICLE FROM THE NEW REPUBLIC

[Mr. HILL asked and obtained leave to have printed in the RECORD an article entitled "Dollar and Pound for Better or Worse," published in the New Republic of August 29, 1949, which appears in the Appendix.]

THERE MUST BE A RIGHT AND A WRONG—EDITORIAL FROM THE DYERSVILLE COMMERCIAL

[Mr. HICKENLOOPER asked and obtained leave to have printed in the RECORD an editorial entitled "There Must be a Right and a Wrong," from the Dyersville Commercial, of Dyersville, Iowa, of July 27, 1949, which appears in the Appendix.]

ADDRESS BY SENATOR SCHOEPPEL AT THE OIL INDUSTRY'S NINETIETH BIRTHDAY CELEBRATION

[Mr. MARTIN asked and obtained leave to have printed in the RECORD the address delivered by Mr. SCHOEPPEL on the occasion of the oil industry's ninetieth anniversary celebration at the Drake Well Memorial Park, Titusville, Pa., August 27, 1949, which appears in the Appendix.]

LIMITATION OF DEBATE IN THE UNITED STATES SENATE—ARTICLE BY SENATOR MYERS

[Mr. MYERS asked and obtained leave to have printed in the RECORD an article entitled "Limitation of Debate in the United States Senate," written by him, and published in the Temple University Law Quarterly, which appears in the Appendix.]

ACCENT ON UNITY—EDITORIAL FROM THE WASHINGTON POST

[Mr. WHERRY asked and obtained leave to have printed in the RECORD an editorial entitled "Accent on Unity," published in the Washington Post of August 30, 1949, which appears in the Appendix.]

DECLINE IN CAUCASIAN POPULATION OF HAWAIIAN ISLANDS

Mr. BUTLER. Mr. President, I ask unanimous consent to have printed in the body of the RECORD a brief article entitled "Territory of Hawaii Caucasian Population Has Loss of 16,764," published in the Honolulu Advertiser for August 21, 1949.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TERRITORY OF HAWAII CAUCASIAN POPULATION HAS LOSS OF 16,764

The net decline of almost 10,000 in the population of the Territory from July 1, 1948, to July 1, 1949, was reflected entirely in the Caucasian group, according to population figures made public by M. A. Taff, Jr., Chief of the Bureau of Health Statistics.

In one year this group dropped from 180,480 to 163,716, a loss of 16,764 persons. The Japanese racial group increased 3,422, from 176,280 in 1948 to 179,702 in 1949, to become the largest single population group.

The third largest group, the part-Hawaiians, increased from 70,110 to 73,277. All other racial classifications remained about the same or increased but slightly.

The alien population, according to the same population report, declined 4,710 during the same 12 months, from 74,020 to 69,310. Major losses were among the Japanese and the Filipinos, whose alien populations decreased 1,154 and 3,090, respectively.

MINIMUM-WAGE STANDARD

The Senate resumed the consideration of the bill (S. 653) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Florida [Mr. PEPPER] as a committee amendment to the text of the substitute.

Mr. TAFT. Mr. President, I wish to make a brief statement in behalf of the bill as a whole. I intend to support one or two of the amendments which will be offered, but I wish to state the reasons why I am in favor of the basic principles of the bill.

Under a system of free enterprise, a system in which economic freedom exists, no one except the Government can afford to pay a man more than the value of the work he does, as reflected by the value of the product and the amount of money people are willing to pay for it. At least no one can afford to do so for very long. I suppose the Government could continue indefinitely to pay people more than they are worth; but no industry

could do it, certainly on a general scale. We cannot raise wages by law simply because we would like to see men and families get more money, because if we do, the ultimate result, if we raise wages too high, is to create unemployment and leave men without any jobs, instead of improving their condition.

The classic instance of that, in my experience, was presented to us when the distinguished Senator from New Mexico [Mr. CHAVEZ] and I went to Puerto Rico. We found that the Federal wage and hour law had been applied to Puerto Rico, which I do not think was intended in the beginning. However, it was applied, though repealed several years later. The result was to destroy the needlework industry in Puerto Rico and for many years put between 100,000 and 200,000 people out of work altogether. They were on the unemployment rolls. So in general we should not raise wages to such a point that a man gets more than the real value of his work.

I do not believe that the minimum wage has any direct bearing on the cost of living. It has no direct relationship to the cost of living. A's cost of living, with a family, may be many times B's cost of living. There is no way I can see to relate the minmum wage to the cost of living. The minimum wage must be related to the value of the work a man does.

On the other hand, under our economic system, particularly where there is no organization of labor, I believe very strongly that wages come to exist which are below the actual economic value of the work. I voted for a minimum-wage law in Ohio when I first went to the legislature in 1921. The particular instance we had at that time was the case of girls coming to the larger cities and obtaining employment in restaurants. They had to accept whatever was offered. The wages they received were far below the real value of the work they were doing. That is one of the justifications for the minimum-wage law. It is to give the unorganized worker some protection equivalent to what the organized worker gets when he is represented by a union dealing with the employer.

I believe also that wages often exist simply because of long custom. Certain wages have always been paid, and they continue to be paid. It is possible that the product is sold for a cheaper price than it need be sold for. People have come to accept certain things as being cheap without realizing that they are cheap because of an artificially low wage in a particular industry. Possibly the price of the product can be raised. Possibly those who say they cannot pay more wages can pay more wages.

We cannot go too far; but it seems to me that we have an obligation to get, if we can, the minimum wage up to a point where people in general get the value they are entitled to receive, but not to the point at which unemployment is created.

The bill proposes to increase the minimum wage from 40 cents an hour to 75 cents an hour, an increase of about 87½ percent. Wages in industry in general have increased far more than that amount. I have here the report of the President's economic advisers, which shows that in the manufacturing industry, where I think there are some 14,000,000 workers, hourly rates of wages since 1939 have increased 118 percent; they have increased from 63.3 cents an hour in 1939 to $1.38 an hour in June of this year. That has been a steady increase, and of course, it has been obtained largely by organized labor—unions—and by general increases in those industries. In the retail trade, where people generally have not considered that there have been any substantial or undue wage increases, wages, nevertheless, since 1939 have increased 103 percent. The 1939 monthly average was 53.6 cents an hour; in May of this year it was 1.11\frac{1}{10}$ an hour.

In bituminous coal mining the increase has been greater; it has been from 88.6 cents an hour in 1939 to $1.95 an hour in May of this year, an increase of 120 percent over 1939. In the building-construction industry, wages have increased from 93 cents an hour to $1.93 an hour, an increase of 107 percent.

So today, among nonagricultural workers, which comprise some 40,000,000 people, there is an average wage rather close—I cannot give the exact figure—to $1.20 or $1.30 an hour.

We are proposing that the minimum wage be 75 cents an hour, or an 87½-percent increase in the minimum wage. Perhaps it is a greater percentage increase than that, because the previous minimum wage of 40 cents an hour was not reached until 1940. Nevertheless, we are trying to bring the minimum wage up nearer to the average wages. If we do not do that, we shall have an increasing disparity affecting the American workers. In the manufacturing industry workers are getting $1.38 an hour, and in the building trade workers are being paid $1.93 an hour, and coal miners are being paid $1.95 an hour. Those are average figures, of course; they include many workers who are paid more than that, and a good many workers who are paid less than that. In the retail trade, where there is less organization and where wages have traditionally been lower, the figure is $1.11 an hour.

So it seems to me that if we wish to do what we can—of course, we cannot do everything at one time—we should provide for unorganized workers a minimum wage having some relationship to other wages, unless we wish to have a growing disparity and unfairness in income in the United States.

Of course, the proper minimum wage for us to decide upon is a guess. Perhaps 75 cents an hour is a little too high; perhaps it is too low. I do not believe anyone can tell. Yet from all the circumstances and from the evidence before the committee, it is my impression that a 75-cent minimum wage in interstate commerce, which is all we can effect, is not going to put anyone out of business or out of work. I believe it is a safe figure.

There is another justification, of course, for minimum wages, and perhaps it was an additional reason for the enactment of the Federal law. That is the fact that if there are very low wages in an industry in one part of the country, that holds down the wages and the standard of living of people in that industry in other parts of the country. One of the reasons for the minimum wage was to provide a minimum which would not permit what may be unfair competition, in effect, because of conditions in one part of the country which would have a generally bad effect upon the condition of workers in other industries.

I do not believe there has been any real dissatisfaction with a minimum-wage law up to date, so far as the wage end of it is concerned. The difficulty with the minimum-wage law and the troubles and difficulties we have had with it have arisen almost entirely from the limitation on hours and the resultant overtime which develops. We do not now propose to change that in any way. It was adopted on a share-the-work philosophy which I think was wrong. I do not think there should have been any share-the-work philosophy; or, if there had been, then certainly as opportunities for employment increase, the number of hours should also increase.

Mr. PEPPER. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. LUCAS in the chair). Does the Senator from Ohio yield to the Senator from Florida?

Mr. TAFT. I yield.

Mr. PEPPER. I was glad to hear the able Senator from Ohio advert to the function of the Federal statute in protecting the employer who wishes to pay a fair wage and does pay a fair wage, against a competitor who is not disposed to do so. Is it not a fact that there were many State laws on the subject of minimum wages, and yet the State laws could not protect the fair employer in one State, in competition with an unfair employer in another State who was not paying a minimum wage? I think the only way that could be done was by the Federal statute.

Mr. TAFT. The Senator from Florida is entirely correct, Mr. President. I was saying that hour limitations were originally passed before this law was enacted, on the theory that people should not be required to work more than a certain number of hours; for instance, in some industries where women are employed, they should not work more than a certain number of hours; and in other industries it was harmful to men to work more than a certain number of hours. But the 40-hour workweek was based on an entirely different theory of sharing the work; and I think some day the whole theory should be reexamined and we should determine whether we wish to continue that kind of provision. But, as I have said, the legislative proposal now before the Senate would not change that in any way. It merely would change the minimum wage to 75 cents an hour.

I do not believe there has been any serious difficulty with the operation of the minimum wage, except in Puerto Rico, where of course the standard of living is half what it is in the lowest State of the United States. Other than in Puerto Rico, I do not believe the minimum-wage end of the law has created any un-

employment; and so long as we keep it in relation to general wages, I do not believe it will create any unemployment.

The American Federation of Labor says the only way real wages can be increased is by an increase in the productivity of the workers. That is done for the most part by giving them better tools. There are some industries which have greatly increased the productivity of labor; there are other industries which have not done so. Yet it seems to me we cannot afford to give the benefit of increased productivity only to the workers in the industries where that has occurred. It seems to me to be obvious that some of the general advantage from increased productivity should spread out over the entire population, and should not be held down so that it does not in any way bring about an increase in the wages of workers who are the lowest in productivity and who therefore get the lowest wages.

There is another reason why the minimum wage will not result in putting people out of work. I believe in all industries which have been paying 65 cents an hour better methods of operation can be found. Many industries are forced, because of competition with other industries, to find better ways of doing the work, so as to increase the productivity of their labor. The number of people who will be put out of work will be infinitesimal. There are ways by which to a certain extent productivity can be increased in a particular industry, and the 75 cents an hour can thereby be justified, even though 65 cents an hour perhaps is all that seems to be payable today.

So, Mr. President, I believe that a minimum-wage theory is consistent with the maintenance of a free-enterprise system, provided we proceed moderately, provided the prescribed minimum wage is in relation to wage rates paid generally in industry throughout the United States, and provided that, so far as the Federal Government at least is concerned, we limit it to matters in which interstate commerce is involved. I see no justification constitutionally or otherwise for the Federal Government's attempt to go into a State and try to fix the minimum wage for all the people in the State. The States have minimum-wage laws. They can perform the function. They are familiar with local conditions. They are far more able to provide a proper variation of wages to meet the particular conditions in each industry. They leave more discretion to State boards to determine what the minimum wages should be, and they can do a piece of work in that field. The Federal Government is interested only in interstate commerce.

I intend to support certain amendments which try to limit the extension of interstate commerce where the courts have tried to extend it; I mean, in order to meet and overrule the Court's attempt to extend it. Of course, I think we have to accept the fact that interstate commerce pretty well goes back to the beginning of production, but I do not think we have to accept any claim that interstate commerce extends to retail distribution, or to distribution within a State, even though the goods come from outside the State. I see no reason why the Federal Government should be concerned with that, and I do not believe interstate commerce, or the constitutional concept of interstate commerce, should extend to the distribution of goods once they have crossed the State line and have been placed in a warehouse or otherwise for distribution solely within the State.

Mr. President, on the general basis of the bill I believe we can hope to maintain a more equitable economy, and I think we can maintain greater equality in the United States and prevent hardship and poverty in many cases through the passage of the pending bill.

Mr. TOBEY. Mr. President, I am addressing my comments first, if I may, to the distinguished Senator from Florida [Mr. PEPPER], and also I should like to invite my friend the Senator from Ohio to make any interpolation he cares to make in my questions in order that I may obtain light on this subject. In common with other Senators—I doubt not they have been receiving communications, too—I have been receiving letters and telegrams from the different interests in my own State of New Hampshire, a small State relatively. I have in my hand a telegram from the president of the New Hampshire Hotel Association, which reads as follows:

> The members of the New Hampshire Hotel Association believe that bill S. 653 would be very harmful to hotels, retail and service establishments. Hotels have no production but specialize in rendering personal service to guests. Compensation to employees in the hotel business consists of wages, meals, lodgings, gratuities, and other considerations and would be impossible to fairly adjust compensation for each individual under a wage-and-hour law. You are urged to support an amendment which would exempt hotels, retail and service establishments. We are very grateful for your good work and helpful cooperation.

The telegram is signed by Mr. O. Theodore Robichaud, president of the New Hampshire Hotel Association. I have other telegrams from similar concerns in the same industry. I inquire if my understanding is correct that Senate bill 653, which seeks to increase the minimum wage 75 cents, already exempts hotels and that they are not placed under the Fair Labor Standards Act?

Mr. PEPPER. The Senator is correct. Hotels and restaurants are not included at the present time under the Fair Labor Standards Act of 1938, and their status is not affected in any way whatever by Senate bill 653, so that, if the bill is enacted by the Congress and becomes law, they will remain not covered by the Fair Labor Standards Act.

Mr. TOBEY. So, if Senate bill 653, establishing a minimum wage, is enacted, it will not affect hotels at all. Is that correct?

Mr. PEPPER. That is correct.

Mr. TOBEY. I refer now to the laundry industry. I doubt not other Senators have had the same experience. I have here a telegram from the president of the New Hampshire Laundry Owners Association, which for the benefit of my colleagues, I shall read:

> WHITE RIVER JUNCTION, VT., *July 13, 1949.*
> Hon. CHAS. W. TOBEY,
> *Senate Office Building,*
> *Washington, D. C.:*
>
> As president of New Hampshire Laundry Owners Association speaking for the organization I strongly urge your support of Senator HOLLAND'S proposed amendment to Senate bill 653 which will I understand clarify the exemption for laundry and dry-cleaning plants. In face of declining volume now being suffered by members of our organization any increase whatever in present minimum of 50 cents per hour means more unemployment for persons normally employed in our industry, and can well mean the actual closing of a number of plants. Give the laundry and dry cleaning industry in New Hampshire a break by going down the line for us this once.
>
> ROBERT M. LEWIS,
> *Williams Laundry Co., President,*
> *New Hampshire Laundry Owners Association.*

I have a similar letter from other laundrymen in the State. The question is: Are their fears unjustified? As I understand, laundries are not now included in Senate bill 653. Is that correct?

Mr. PEPPER. I shall try to answer the able Senator from New Hampshire as accurately and as fully as I can. Senate bill 653 does not change the law upon the subject of the coverage of retail and service establishments. If Senate bill 653 were to become the law, the law on the subject would remain exactly what it is today.

Later on, there will be a fuller discussion of the subject, when the amendment of my distinguished colleague [Mr. HOLLAND] and his associates comes up for consideration. What they complain about is not the provisions of Senate bill 653, but the decisions of the United States Supreme Court in interpreting the present Fair Labor Standards Act? We shall address ourselves to that question when the amendment comes up; but I may merely say now the general explanation is this: At the present time the United States Supreme Court has held, in a decisive opinion on the subject, written by a distinguished former colleague of ours, Mr. Justice Burton, that in determining whether a service establishment is a retail service establishment, or whether a selling establishment is a retail sales establishment—a retail store—if more than 25 percent of the sales of the establishment, service or retail, is to commercial or industrial users or customers or purchasers; if, for example, a service establishment, say, a laundry, does 75 percent of its business, with the ordinary household, and it is a laundry of the ordinary, usual character, then it makes no difference what the other 25 percent of its dollar volume is, it is still a retail establishment and, being a retail establishment, unless it does 50 percent of its business in interstate commerce, its employees are not covered at all.

If the Senator will allow me, while I am on the subject, I shall make the same application to the retail establishment, which we generally think of as a store. Let us remember that all the employees of the retail establishment are exempt,

provided the retail establishment does not do more than 50 percent of its business in interstate commerce. First, to determine what is the criterion of a retail establishment, the statute itself does not lay down any standard, but over the course of years, the Wage and Hour Division has adopted the test supported by the courts, including the Supreme Court of the United States, namely, Is more than 25 percent of the volume of business of the retail establishment of a wholesale character, that is, is more than 25 percent sold to people who purchase for a profit or business motive instead of for the purpose of consumption as the ordinary purchaser buys when he goes into the ordinary retail establishment? In the case of a store, if only 25 percent, or less than 25 percent, in dollar volume of the sales of the retail establishment are either to commercial users, industrial users, or in large quantity, it is still a retail establishment. But if more than 25 percent of its dollar volume sales are to commercial purchasers, industrial purchasers, or purchasers who buy with a profit motive in large quantity, then it does not have the status of a retail establishment.

Mr. TOBEY. But the part over and above the 25 percent that brings them within the pale of the law is the only part that would come under the law. Is not that true?

Mr. PEPPER. No. It is very significant as to whether it is a retail establishment or whether it is not. If it is a retail establishment by the definition we have just discussed, then it can do 50 percent of its business in interstate commerce, across State lines, and still not be covered by the law. It could not do that unless it were a retail establishment and had a statutory exemption. If it is not a retail establishment, if more than 25 percent of its business is other than retail, so that, in substance, it is wholesale in character, then the employees of the establishment who participate in interstate commerce are covered by the law, but only the employees who so participate. In the case of a wholesale mercantile establishment, that would include those engaged in the ordering of the goods and in the receipt of them, and perhaps in their storage in the warehouse. But it would apply only to those engaged in an interestate operation.

Mr. TOBEY. I thank the Senator. I should like to make one more comment——

Mr. PEPPER. Senate bill 653 does not change the law whatever on that subject.

Mr. TOBEY. I thank the Senator for his enlightening statement.

Mr. HOLLAND. Mr. President, before we leave the field of laundries, I should like to make a very short statement in connection with that field.

Mr. TOBEY. I was about to take up another subject, so the Senator may go ahead, please.

Mr. HOLLAND. I may say to the distinguished Senator from New Hampshire that after having made a careful study of the situation of laundries, it is completely clear to me that the status of laundries is just about as clear as mud, under the present law, and that that is what is causing their concern.

I have in my hand two letters from the Wage and Hour Administrator, one dated July 2, 1942, to former Representative Hartley, of New Jersey, and the other dated January 6, 1947, to Representative NORRELL. They are too long to go into in great detail; but I think it would make it completely clear as to the mess, if I may use that word, the laundries are in, if I should read two paragraphs from the latter letter, that of January 6, 1947, to Representative NORRELL, and then perhaps make a brief statement. Here is a paragraph taken from page 2 of that letter:

> As early as 1940 my predecessor as Administrator of these divisions publicly expressed the opinion that some laundries could qualify as service establishments and others could not. Those which could qualify were stated to be the ones who restricted their customers to private individuals and householders and who limited their work to laundering and cleaning of wearing apparel and household linens. The opinion went further and explained that other types of laundries engaged in work for commercial customers, such as hotels, restaurants, manufacturing establishments, and other laundries could not qualify as service establishments.

The Senator will see that the line of distinction was not based on the question of intrastate commerce as against interstate commerce, but solely, for the purposes of this particular paragraph, on the kind of customers.

Coming to the last page of the letter, I shall read four paragraphs which show the present confusion:

> In June 1943 the Circuit Court of Appeals for the Sixth Circuit decided the case of *Lonas* v. *National Linen Supply Company* This was a case in which an employee sued a laundry which was the kind the Administrator had said was not a service establishment. The circuit court of appeals ruled in favor of the laundry and said in effect that all laundries were service establishments, regardless of the kind of customer they served.
>
> The Supreme Court of the United States was asked to review this case, and on November 8, 1943, it refused to do so. Thereafter I issued a public statement directed particularly to the laundries in which I said simply that I would withhold any action against laundries so long as this decision of the circuit court of appeals remained effective.

In other words, the circuit court of appeals held that the laundries were service establishments and were exempted, and the Administrator announced that he would not proceed against any of them.

I continue to read from the letter:

> On January 28, 1946, the Supreme Court of the United States decided the case of *Roland Electrical Company* v. *Walling*. Although this case did not involve a laundry, it did involve the question of what constitutes the kind of service establishment which was entitled to the exemption, and in its decision the Supreme Court overruled the earlier decision of the circuit court of appeals in the Lonas case.
>
> The laundry industry, of course, has known of this decision for almost 11 months, and a few weeks ago I issued another public statement specifically directed to the laundry industry in which I advised that industry that beginning January 15, 1947, my enforcement policy will be to apply the law to those laundries which, under the opinion expressed by the former Administrator and under the decision of the Supreme Court, are not entitled to the exemption.

Mr. President, the best I can get from these letters, after reading the cases, is that the Administrator now places laundries on notice that the decision in the Roland case has muddied up the question and that they proceed at their own risk.

The amendment which is referred to as the Holland amendment, though I am joined in it by five other Senators—the Senator from Iowa [Mr. GILLETTE], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Pennsylvania [Mr. MARTIN], the Senator from Nebraska [Mr. WHERRY], and the Senator from New Hampshire [Mr. BRIDGES]—seems to make the matter perfectly and crystal clear. The amendment is asked for by the laundry people, because they do not know what their situation is, and they are peculiarly apprehensive, not only because the situation is not clear—on the contrary, it is scrambled—but because their hazard is perhaps enhanced by increasing the minimum wage, under the pending bill, from 40 to 75 cents.

So, if I may be permitted to supplement the statement of my distinguished colleague, I would say that insofar as laundries are concerned, I do not believe their status will be clarified by the passage of Senate bill 653, and that it seems to me the Senate would be wise to clarify their status as has been attempted to be done by the House in passing a few days ago the Lucas amendment which embraced a great many things, some of which I approve and some of which I do not approve, but which contained, among other things, the specific wording in the so-called Holland amendment, including the language applicable to laundries and also applicable to retail and service establishments generally.

Mr. TOBEY. Since the document from which the Senator read was dated in 1947, can the Senator state whether there has been any subsequent change in interpretation?

Mr. PEPPER. If the Senator will allow me——

Mr. TOBEY. I yield.

Mr. PEPPER. My distinguished colleague referred to confusion, and I thought at one time there was some innuendo of criticism against the Administrator. I was sure, as he read on, that it became clear and that such innuendo was not intended. But the ruling of the Administrator, put into effect in 1947, was based upon the decision of the United States Supreme Court, rendered in 1946. Of course, prior to that time, the Administrator had to be governed by the law as it was declared by the circuit court of appeals, but afterward the United States Supreme Court, Mr. Justice Burton writing the opinion, laid down an opinion which the Administrator thought supported him, and he changed his regulations in accordance with the interpretation of the law declared by the Supreme

Court. Those regulations remain in effect at the present time.

I may say that I do not think it is a question of ambiguity which is involved, but the industry wants to get out from under coverage. It wants Congress to repeal the decision of the Supreme Court because it does not like the definition and the interpretation of the law made by the Supreme Court. Of course Congress has ample authority to do that, but we who are the advocates of not changing the law as the courts are interpreting it would like our colleagues not to take a position reversing the Supreme Court of the United States until they have heard both sides of the case, because, otherwise, it would have the effect of removing several hundred thousands of persons from coverage who are now covered by the law. That is also pertinent to this discussion.

Mr. TOBEY. I thank the Senator from Florida.

Mr. HOLLAND. Mr. President, will the Senator yield further?

Mr. TOBEY. I yield.

Mr. HOLLAND. I think some Senators might misunderstand the statement of my able colleague to have been that the decision of the Supreme Court related only to laundries. As a matter of fact, it related to the sale of manufacturing machinery to manufacturers. The real point was whether that kind of sale should be considered as a retail sale; but the language of the decision is such that the Administrator says it applies to laundries, and he has, therefore, put them on notice that it does apply to them.

I may say, in order to clarify the matter as much as it can be at this time, thought I expect to go into it in greater detail, that the pending amendment does not in any way seek to exempt a laundry which is in interstate business, that is, doing business on an interstate basis. Nor does it attempt to exempt laundries which have served railroads, bus lines, and the like, which are in interstate business. It does seek to make crystal clear the fact that local laundries which are performing a local service, are just as much exempt if they take laundry from a local hotel, local courthouse, local city hall, or local business building, as they are if they take laundry from the homes of the community which they serve. Of course, there is a percentage basis, which is the same percentage that is in the interpretative ruling of the Administrator.

Mr. TAFT. Mr. President, will the Senator from New Hampshire yield?

Mr. TOBEY. I yield to the Senator from Ohio.

Mr. TAFT. The Senator no doubt is familiar with the original Wages and Hours Act. That act exempts altogether any employees engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce. In my opinion the Supreme Court opinion has whittled that down. I presume to differ with the Supreme Court, at least with their language. The Supreme Court has not taken an absolutely definite position, but they at least suggest various kinds of businesses as not being retail or service establishments which I think are retail or service establishments.

The Senator has cited the case of a laundry. They suggest that a laundry that is providing laundry service for an industrial establishment is no longer a retail-service establishment whose selling is in intrastate commerce. It seems to me it is such an establishment.

Then we have the case of the establishment selling farm equipment. The Administrator himself says that farm implement dealers are retail sellers. But later on he says that the Supreme Court has grave doubt on whether it will uphold the decision that the sale to and the servicing for farmers of farm equipment is exempt-type selling or servicing.

The Supreme Court suggest, at least, that if one sells farm equipment to a farmer, equipment which he is going to use on his farm in producting goods for other people, it is not a retail sale. I think obviously it is a retail sale. They say, in effect, that a paint store which sells paint to one to paint his house is a retail store, but if it sells the same quantity of paint to a painter who comes and paints the house, then it is not a retail store. In other words, gradually they have been entrenching on the original amendment.

I think all of the difficulty would be cleared up by the adoption of the amendment of the distinguished Senator from Florida. When we adopt it, I do not think we will do one thing more than reaffirm the original position of the Congress of the United States in the first wage-hour law, in which Congress said that "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce" was exempted. The amendment would reaffirm the original law, removing the doubts which have been cast on it in rulings in Supreme Court cases and other cases.

Mr. TOBEY. Mr. President, let me say to the Senator from Ohio that I was a Member of the House of Representatives when the 40-cent minimum wage law was passed—it seems like four centuries ago—and having a minimum wage law of that kind has been a disgrace to the country, in my opinion.

I should like to see the minimum wage law, in accordance with Senate bill 653, fix the minimum wage at 75 cents. But I do want consideration for those who write me, who apparently are sincere, and who are worrying about their position under the proposed law. Apparently the Senator from Ohio feels that the pending bill, with the Holland amendment, would take care of the idiosyncrasies and the whittling down processes to which he has referred.

Mr. TAFT. Mr. President, I think it would take care of retail stores, farm-equipment dealers, laundries, hotels——

Mr. TOBEY. The hotels are now out, are they not?

Mr. TAFT. The hotels are out, I think there is a good deal of language in the cases which suggests that some hotels might be found to be under the interstate commerce provisions.

Mr. TOBEY. What is the Senator's judgment about it?

Mr. TAFT. If I had been originally construing the law, I would have excluded hotels. But I am not sufficiently familiar with the cases which have raised these questions, and some kinds of hotels are very much concerned lest they be covered by the law.

Mr. PEPPER. Mr. President, will the Senator from New Hampshire yield?

Mr. TOBEY. I yield to the Senator from Florida.

Mr. PEPPER. I interrupt only, if the Senator from New Hampshire will accept my apology, because I have before me Interpretative Bulletin No. 6, Retail and Service Establishments, issued June 1941, in which they quote as follows on page 6:

> Typical examples of service establishments akin to retail establishments, within the meaning of the exemption are: Restaurants, cafeterias, roadside diners, hotels, tourist homes, trailer camps, home laundries, barber shops, beauty shops, public baths—

And so on.

Mr. TAFT. I quite agree with the Senator that the present ruling of the Administrator is that they are exempt, but the representatives of the hotels do not feel a bit certain that under the decisions they will stay exempt, at least as to certain types of hotels.

Mr. THYE. Mr. President, will the Senator from New Hampshire yield?

Mr. TOBEY. I yield to the Senator from Minnesota.

Mr. THYE. I should like to ask whether Senate bill 653 in any manner changes the exemption now allowed canneries, commercial canneries, such as canneries which might be engaged in processing peas, sweet corn, or any of the vegetables. They have been exempt under the law. Does Senate bill 653 in any way change that exemption?

Mr. PEPPER. If the Senate should adopt the committee amendment which we propose, the present law would not be changed with respect to the subject inquired about by the Senator, namely, canneries and other agricultural operations.

Mr. THYE. They are engaged seasonally, and when the season arrives, they must work night and day, Sundays and Saturdays.

Mr. PEPPER. We understand that. At the present time the law is that certain types of operations which are in the area of production get complete exemption from both the minimum wage and maximum hours provisions of the law. All those which are outside the area of production are entitled to a 14 weeks' seasonal exemption from liability to pay overtime, not minimum wages, but from overtime, and it is within the discretion of the Administrator to award them an additional 14 weeks' seasonal exemption if an appropriate showing therefor is made. Our bill, when the committee amendment, as I hope it will be, is adopted, will leave the law on that subject entirely unchanged.

Mr. THYE. I should like to ask a further question, relative to creameries.

Mr. PEPPER. The answer is the same with respect to creameries or any other agricultural operation. When the bill was reported to the Senate, as other Senators on the floor who are members of the committee will attest, we did attempt to make a step forward by removing the exemption of the minimum-wage coverage for workers engaged in the processing of agricultural commodities within the areas of production. But there was considerable objection to that action of the committee on the part of our colleagues, and finally at a meeting of the committee we resolved, in the interest of trying to forward the legislation, to restrict that proposal, and yesterday I offered an amendment on behalf of the committee which, if adopted, will leave the law exactly as it is with respect to employees in any agricultural operation.

Mr. THYE. I have had a great number of telephone calls and other communications concerning the exemptions allowed telephone companies. At present they are allowed 500 subscribers.

Mr. PEPPER. They are allowed 500 units at the present time. Where they do not have more than 500 units, they are exempted from the coverage of the law.

Mr. THYE. The increase in the number of telephone subscribers of many small telephone units existing in small cities or towns has placed them beyond the exemption.

Mr. PEPPER. If the Senator from New Hampshire will allow me, I will say there is no doubt that a great many people believe that the number should be raised to 750 subscribers. They believe that one of the 500-subscriber exchanges in existence at the time the law was previously enacted, would no doubt have 750 subscribers now.

Mr. THYE. That seems to be only a common-sense assumption.

Mr. PEPPER. To be perfectly candid with the Senator, I will say the House extended the exemption to 750 units. The problem we are going to be obliged to face, Mr. President, in consideration of this law, is basically this: At a time when we were holding out a little hope and a little encouragement to the workers of the country that we were going to add a little bit to the assistance they might expect, are we going to raise the wages of some and take others out from under the coverage of the present law? To be perfectly frank, I might as well say now, not in criticism, but by way of explanation, that the bill which has come over to us from the House of Representatives, and which adopts the 75-cents-an-hour wage criterion, will benefit, in respect to wages, about 1,250,000 workers, according to an estimate of the Department of Labor; but it is the estimate of the Department of Labor that about 1,000,000 workers now covered by the present law will be taken from under any coverage. I am not so sure that that is a victory for the cause of aiding the worker. We start out first with the hope that we might extend coverage and raise wages. If we wind up, however, by taking away the coverage of a great many workers, I am not so sure, as I said before, that that can be considered to be a victory for the cause of aiding the workers.

Mr. TOBEY. Is it the Senator's thought that by adopting the proposed amendments the legislation now pending before the Senate would be analogous to or exactly in the form of the House bill as it came to the Senate in the first place?

Mr. PEPPER. There is no doubt that every one of these amendments, whatever merits they may have, will have the legal or practical effect of removing coverage from many workers throughout the country now covered by the law of the land.

Mr. SCHOEPPEL. Mr. President, will the Senator yield?

Mr. TOBEY. I yield to the Senator from Kansas.

Mr. SCHOEPPEL. I should like to say to the Senator from New Hampshire that the very question he has raised with reference to laundries and hotels, and the question raised by the distinguished Senator from Minnesota [Mr. THYE], is being raised in my State, and there is a very definite desire for a greater degree of clarification in reference to those industries which are in that agricultural section of the United States than the measure now pending before us presumes to give them. So I am going to be very definitely interested, I say quite frankly, in the extent to which the amendments might go because there is a general feeling that much confusion exists, and the laundry industry and hotel proprietors and owners are in much of a quandary as to what is going to happen to them.

With respect to the telephone companies in Kansas, the general feeling has been that if the minimum were placed at 750 subscribers, a greater degree of good would be accomplished than by leaving the figure at 500 subscribers, in view of the increase in the number of subscribers that has come about in local communities, as the Senator knows.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. TOBEY. I yield.

Mr. PEPPER. I made a misstatement inadvertently a moment ago. I stated that the House bill raised exemptions to telephone exchanges to those having 750 units. I was in error in that statement. The House voted down the amendment which made such provision, and under the House bill the present exemption of 500 units is made.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. TOBEY. I yield.

Mr. HOLLAND. Since the question of hotel exemption has come into discussion, I may say that I agree entirely with my distinguished collegaue and with other Senators, that hotels were never intended to be included; and that hotels and restaurants should be exempted and excluded.

I call Senators' attention to the fact that there are two reasons why hotels and restaurants are both extremely apprehensive. First is the fact that a Federal court has already in one case held that a restaurant, though independently owned and managed, and having nothing to do with a factory, though its principal job was to feed the employees of the factory and others who come in, was not exempt under the provisions of the act. Furthermore, one of the largest of the labor organizations is now taking the position very aggressively that hotel labor comes under the purview of the National Labor Relations Board, and is moving to that end by an affirmative course which could be discussed if it were necessary.

The point I make is that not only because of the two matters which I have mentioned, but also because of the general situation which has resulted from the fact that when there is any relation at all to interstate commerce—and, of course, many times the guests at hotels are travelers from other States—there seems to be the desire to reach out and grab more jurisdiction not only under this law but under similar laws. The hotel people and the restaurant people feel that they are entitled to have their status made perfectly clear under the provisions of the amendment, so there can be no question of their inclusion, particularly when it is now sought to raise the minimum wage to 75 cents an hour. So they are apprehensive, and have communicated their apprehensions to the Senator from New Hampshire, and I may say, after having made a study of the situation, I feel they are thoroughly justified in their apprehensions.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. TOBEY. I yield.

Mr. WHERRY. I want to voice complete accord with the observations made by the distinguished junior Senator from Florida, and also those made by my colleague from Kansas [Mr. SCHOEPPEL]. I have received many communications from people of my State who are completely confused about this matter. I have received communications and requests from laundry owners and restaurant owners, and also from retail implement dealers, coal dealers, and hardware dealers that clarification be made of the existing confusion. I am not sure that all of them are taken care of by the Holland amendment. I think we have to go further than that amendment goes. I desire to join in the particular effort being made by the Senator from Florida, because I feel there is a need for clarification, judging from the mass of correspondence I have received from my own State of Nebraska as well as from other States of the Union.

Mr. TOBEY. Mr. President, I speak directly to the chairman of the subcommittee, the distinguished senior Senator from Florida [Mr. PEPPER]. I am sure the Senate will pardon the personal observation I wish to make, because the experience I shall mention relates to the bill. Last winter, during the examination conducted by a subcommittee of the Senate Committee on Interstate and Foreign Commerce into the Textron enterprises, we discovered a situation in Puerto Rico which puzzled me. We found that while the textile workers in the North and in the South were receiving $1.23 an hour, in Puerto Rico the

workers were receiving 25 cents an hour, and in the sewing rooms women are working for 15 cents an hour. Of course, I realize fully what was stated a moment ago, that living conditions are different, and so forth. Yet the disparity in wages was far more extreme than the difference in living conditions would justify. I desire to read recommendations from the report of the subcommittee of the Committee on Interstate and Foreign Commerce in connection with our investigation of Textron, Inc.:

The subcommittee urges that the appropriate committees of the Congress consider the various aspects involved in the Puerto Rican problem with a view to adopting these proposals in part or in full. They are as follows:

1. Raise the minimum wage of the industrial employees in Puerto Rico to such a level as will eliminate the unfair competitive advantage that now exists by virtue of low-cost production as effected by the use of cheap labor.

In the report of the Committee on Labor and Public Welfare, cognizance is taken of that situation, and they are referring to Puerto Rican and Virgin Island industries when they say as follows, which appears on page 4 of the committee report on S. 653:

The bill provides that such procedures will continue to be used with respect to such employees with a view to bringing the rates in these islands as rapidly as is economically feasible up to the 75-cent minimum-wage objective. The evidence before the committee is clear that Puerto Rican and Virgin Island industries still need the special procedures provided for by the Congress in 1940. It is expectation of the committee that under the provisions of the bill existing minimum-wage rates in the islands will be reconsidered as rapidly as possible in order to assure that the highest minimum-wage rates practicable will be established and that industries in the islands will not gain a competitive advantage over the comparable industries on the mainland.

So the Senator's thinking and the thinking of the committee which adopted this provision squares with what the Subcommittee on Interstate and Foreign Commerce, of which I was chairman, recommended in its report last fall, which report was later adopted by the full committee of the Senate.

I think it should also be pointed out, as collateral evidence, that certain industries have gone to Puerto Rico and reaped the benefit of a 25-cent minimum wage, as against a wage of $1.23 here. Furthermore, they have been given a 12-year holiday from all Federal income taxes. As a result of the small wages and the tax exemption, both the North and the South will suffer from that kind of policy. We have given hundreds of millions of dollars to this ward of ours, which is now siphoning off our industries. She is like the sirens in the Aegean Sea in ancient times, who combed their hair and lured sailors to their doom. This bait is offered, and our industries go down there. In 12 years an industry which receives a tax holiday can write off the cost of the entire plant. I understand there are six such industries down there now.

This is a part of the entire picture. We are interested in America, and in Puerto Rico, but we want justice and equity to prevail in the relationship between those two great entities, and between the Puerto Rican industrial situation and the textile industry here. Does not the Senator agree?

Mr. PEPPER. Entirely so.

I see the able Senator from Ohio [Mr. TAFT] in the Chamber. Since the question of hotel coverage has arisen, I think it might be well to clarify this question, not only with respect to the Fair Labor Standards Act, but also with respect to the National Labor Relations Act, because no doubt the two may be considered as related. We know that this question has been raised. There was some discussion during the hearings conducted by the Joint Committee on Labor-Management Relations, of which the Senator from Ohio and I are members, as to whether hotels were covered. As I recall, Mr. Denham testified in those hearings that because hotels were substantial buyers of such items as linen and soap, much of which passes across State lines, and because commercial hotels were designed to accommodate the traveling public, their business would affect interstate commerce, and that he, as general counsel, intended to assert jurisdiction.

However, if I recall correctly, Mr. Herzog, Chairman of the Board, testified that in his opinion jurisdiction might depend on the size of the hotel, and that there might be a difference between a country inn and a commercial hotel in a city serving traveling salesmen.

I am informed that in a case which came up from Miami Beach, Fla., involving the Vanderbilt Hotel, the National Labor Relations Board held that the Board did not have jurisdiction in that case over a labor dispute, and therefore that the National Labor Relations Act did not cover wage disputes with respect to hotel employees and hotel managements.

I thought it might be appropriate, since this question has arisen, to inquire with regard to this situation of the able Senator from Ohio, who is one of the primary authors of the Taft-Hartley law, and also the principal author of the recent bill which was passed by the Senate, called the Taft law.

I wonder if the able Senator from Ohio can tell us whether it was the intention of the authors of the Taft-Hartley law, or of those associated with him in the sponsorship of the recent Taft bill on the subject of labor-management relations, that hotels should be covered, and that disputes between employees of hotels and the management thereof should come within the National Labor Relations Board jurisdiction, or under the provisions of the Taft Act.

Mr. TAFT. Mr. President, the Senator from Florida told me that he intended to ask this question. Of course, I cannot speak for all those who framed the Taft-Hartley law, or the bill which was passed by the Senate this year. However, I am told that during 13 years of operation under the Wagner Act the National Labor Relations Board never took jurisdiction over a hotel. The Taft-Hartley law did not change in any way the language providing the jurisdiction of the Board, or the general definition of interstate commerce.

It was not my intention in 1947, nor do I believe it was the intention of other members of the Committee on Labor and Public Welfare, to broaden or extend the jurisdiction of the Board in that respect. In fact, I feel very strongly that it should not be done. In recent years we have seen a growing tendency on the part of the administrative agencies to extend their jurisdiction in fields previously reserved for State action. Merely because a local retail or service industry receives merchandise which has crossed State lines, it does not follow, in my opinion, that the local enterprise is one which affects interstate commerce. A hotel performs its service within four walls. It ships nothing into commerce. It produces no goods for commerce. In my opinion the act was never intended to cover the hotel industry.

Mr. PEPPER. Would the statement just made by the able Senator from Ohio apply equally to resort hotels, as well as commercial hotels, serving the general public?

Mr. TAFT. I do not believe that the act was ever intended to cover any part of the hotel industry, as we know it, whether we are considering resort hotels or the more common commercial hotel found in both cities and small towns. At least, I am sure that such was never my intention.

Mr. PEPPER. I thank the Senator.

Mr. THYE. Mr. President, I should like to ask the able Senator from Florida a question. I noted that in the House language, by a specific provision, newspapers of 5,000 circulation and under were exempted, whether they were weekly newspapers or daily newspapers. I wondered what the attitude of the committee or the Senate might be on the question whether we should amend that provision so as to provide the same exemptions as are provided in the House language.

Mr. PEPPER. Mr. President, the Committee on Labor and Public Welfare has not affected that subject at all. We have not offered, and do not contemplate offering, any amendment on that subject. Rather, we contemplate leaving the law as it is at the present time. However, that would be one of the subjects in conference between the Senate and the House. I do not see any great detriment in our agreeing to the House language in conference. I do not wish to commit myself to a solemn decision at this time. Certainly I have no right to commit my colleagues who may be in the conference. But that is certainly one of the subjects for conference. Since the number of subscribers is not increased, the effect inevitably would be to let out from under coverage a few workers who are now covered. At the present time only weekly newspapers having fewer than 5,000 subscribers are exempt; but the employees of a daily newspaper, even though it has fewer than 5,000 subscribers, are presently covered. If we exempt them by a

provision in this bill, it means that we take coverage away from so many more workers who are now covered. I do not know the number of workers who would be adversely affected, but that question poses a problem.

Mr. THYE. Did the committee give some consideration to the question?

Mr. PEPPER. I do not recall that emphasis was placed upon the question in the hearings. Frankly, at the moment I do not recall whether it was brought to the attention of the committee in the course of the hearings or not. I do not recall any witness who appeared before the committee at its hearings to ask for such an exemption. I can refresh my memory by referring to the record.

I ask the Senator from Ohio whether he recalls any witness appearing before our committee at the hearings and asking that the exemption which is currently extended to weekly newspapers of less than 5,000 circulation be extended to daily newspapers.

Mr. TAFT. I do not remember any. Of course, more extensive hearings were held last year before the subcommittee of which the Senator from Connecticut [Mr. BALDWIN] is a member, but I do not believe that any such request was made at that time.

Mr. PEPPER. The representative of the staff does not recall that that subject was brought to our attention in the course of the hearings. However, as I stated yesterday, to as great an extent as possible we are trying to confine our bill to the purpose of raising the minimum wage to 75 cents an hour, leaving the more controversial subjects for future consideration by Congress.

Mr. THYE. Without changing any of the exemptions or coverages?

Mr. PEPPER. That is correct, with the exception of those amendments which we have accepted at the urging of our colleagues. Had our bill, with the committee amendment to which I referred earlier, with regard to area of production, been adopted, we would not have extended coverage at all, except perceptibly in the field of child labor. We would have given protection to some children who would not otherwise have had it. But I believe that is the only instance in which we move forward in the extention of coverage and protection.

Mr. THYE. But the committee intends, in the course of the Eighty-first Congress, to study the entire question of exemptions.

Mr. PEPPER. Yes. As I stated yesterday to the distinguished Senator from Mississippi, there are many questions which might be considered by the Congress. It might consider proposals to adjust this or correct that, or perfect something else; but we feel that at this stage of the session it would be difficult to undertake a rewriting of the entire basic Fair Labor Standards Act. However, I assure the Senator that, if I am in the conference with the House of Representatives, sympathetic consideration will be given to the provision in the House language which allows exemptions to employees of newspapers with less than 5,000 circulation.

Mr. THYE. With that assurance, I shall not belabor the Senate or the committee with an amendment to that effect.

Mr. PEPPER. I thank the Senator from Minnesota very much.

Mr. LANGER. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. LANGER. I should like to inquire whether or not mutual telephone lines are excluded.

Mr. PEPPER. At the present time the law makes no distinction between a mutual or cooperative telephone exchange and one which is privately operated for profit.

Mr. LANGER. I am informed by various letters and telephone calls from North Dakota that lines in small towns with less than 500 subscribers cannot possibly exist in competition with the large telephone companies, because the larger companies can take money from the big cities to make up deficits in smaller places.

Mr. PEPPER. The committee had very definite testimony pro and con on the question of exemptions for telephone exchange operators and employees. The union representatives and representatives of the employees told us how great was the need for the removal of the exemption now had and for the extension of the law. There were others, who represented management, who argued for a greater exemption than the law now allows.

So it is simply a question of whether Senators feel we should remove from coverage certain workers who now are covered by the law or whether we should give them a little greater benefit.

Mr. LANGER. How many fewer people will be covered by the proposed legislation now before us?

Mr. PEPPER. I am advised by a member of the staff that it would unfavorably affect about 10,000 employees to raise the exemptions from 500 to 750 subscribers.

Mr. TAFT. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. MCFARLAND in the chair). Does the Senator from Florida yield to the Senator from Ohio?

Mr. PEPPER. I yield.

Mr. TAFT. I am advised that there are about 10,000 companies having 500 subscribers or less. There are about 580 additional companies having between 500 and 750 subscribers. How many employees there are per company in the case of the 580 companies, I do not know. I would not suppose there would be quite as many as the Senator suggests. I would think it would be more than three or four per company, but I might be mistaken.

Mr. PEPPER. There are that many employees in that field. Figures as to the number per company would be only an estimate. But I certainly think it would be several hundred, and it might be a thousand or two thousand.

Mr. LANGER. Can the Senator also tell me about the laundry situation? There are many small laundries in my State. Are they covered?

Mr. PEPPER. I think I can say unequivocally that small laundries are not covered. No laundry is covered unless more than 25 percent of its business goes to industrial concerns or to business concerns or to people who get service in larger volume than the ordinary laundry customer does.

Mr. LANGER. I thank the Senator.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. WHERRY. I should like to ask the acting majority leader whether he understands that it is the intention of the majority leader to have the Senate continue in session tonight.

Mr. PEPPER. It is the desire of the distinguished Senator from Illinois [Mr. LUCAS], the majority leader, that we progress on the bill during the day as far as we can, and it is the hope to conclude action on the bill either tonight or tomorrow or tomorrow night. The Senator will recall the announcement of the majority leader that he was disposed to have the Senate take a week's recess after the conclusion of action on this proposed legislation, if the Senate chooses to do so.

Mr. WHERRY. Can the Senator from Florida state whether there has been a decision regarding a recess for an hour tonight between 7 and 8 o'clock?

Mr. PEPPER. I have not been consulted about that; but I think it is a wise course, and I should be glad to have that done.

Mr. WHERRY. Many Senators have inquired about the plans for tonight.

Mr. PEPPER. Mr. President, I have just this moment received word that that is the plan for the majority leader, and I assume that will be done.

Mr. WHERRY. So the acting majority leader says there will be a recess between 7 and 8 o'clock tonight; does he?

Mr. PEPPER. That is the information I now have, and I think the Senator can rely upon it.

ANTITRUST LAW PROSECUTIONS IN THE OIL INDUSTRY

Mr. GILLETTE. Mr. President, the junior Senator from Iowa has often been critical of the practice of using the consideration of appropriation bills for the discussion of extraneous matters. However, I have a very good reason for asking the indulgence of Senators for about 15 minutes while I make a statement on a subject of outstanding interest, I believe, to all persons in the country. The statement is one which I intended to make several weeks ago; but in view of the fact that it dealt with certain correspondence between the Office of the Attorney General and my office, I reached the conclusion that the presentation of the statement at that time might be considered as critical of the then Attorney General, whose nomination to a seat on the Supreme Court was then pending in the Senate, and who has since been confirmed, and now is an Associate Justice of the Supreme Court. Because of that situation I delayed making the statement. But I wish to make it now.

Recently, there has been considerable agitation and discussion relative to the need for strengthening our antitrust

laws. Several Senators, individually or through committees, have been assiduously studying this need and have been suggesting legislation to implement the need. Mr. President, we can pass all the antitrust laws we can conjure up and we can appropriate all the money necessary to enforce such laws; but unless there is a determined effort to file the necessary suits for enforcement and to prosecute the suits to a favorable conclusion, there will be little effectiveness in our antitrust legislation. Under the Sherman Antitrust Act, only the Attorney General can authorize the institution of a suit. A district attorney might have all the evidence in the world on which to base a suit under that act, and he might have all the necessary zeal to prosecute for infractions of the law; but his hands are tied until the Attorney General of the United States approves the institution of the action.

Following the winning of the Government's criminal case against many of the major oil companies at Madison, Wis., in the period 1936–40, there were a great many Senators and House Members, including myself, who felt that something more was needed in that field of activity. We felt that the 22 integrated oil companies should be enjoined from continuing to exploit the people in the manner that was evidenced in the disclosures in the Madison oil trials, and that they should be put under some restraining order of the courts.

It is interesting in this connection to call attention to some recent correspondence between the former Attorney General, Hon. Tom Clark, and myself. On April 13, 1949, I addressed to the Attorney General a letter, which I shall now read:

The Honorable TOM CLARK,
Attorney General of the United States, Department of Justice, Washington, D. C.

MY DEAR GENERAL: On September 18, 1940, during my former Senate service, I addressed a letter to the Honorable Robert H. Jackson, who was then Attorney General, with reference to the discussions then under way pertaining to the filing of an antitrust suit against the 22 major oil companies. There was at that time some opposition to the filing of such a suit on the part of the National Council for Defense. I had urged at that time that a prayer be inserted in the proposed complaint asking for divorcement of the oil industry into its various logical segments.

On September 28, 1940, Mr. Jackson replied that he had authorized the Antitrust Division to commence the proposed civil action so far as it sought to present existing abuses in the oil industry, but delaying the divorcement issue until a later time. Mr. Jackson stated in part in his letter to me:

"The Defense Commission indicated that a court decree of divestiture at this time would create a number of serious problems for the national defense. Accordingly, this action does not seek at this time to compel the oil companies to get rid of their pipe lines, barges, or other facilities for the transportation and distribution of petroleum. I believe there might be serious consequences from a disruption of these facilities at a time when we have no capital presently willing, so far as I am able to ascertain, to acquire and operate these facilities for themselves.

"The National Defense Commission, however, referring to the divestiture phase of the case says: 'The Commission does not suggest that the proposed suit should be abandoned.' It is not being abandoned either in a later action or by amendment of proceedings in the existing suit if at the time of trial it shall appear that the abuses in the oil industry can be corrected in no other way."

The suit was filed on September 30, 1940, in the District Court for the District of Columbia and is known as Civil Action No. 8524, the *United States of America* v. *American Petroleum Institute*. On February 22, 1944, Attorney General Francis Biddle addressed a letter to me, which said in part:

"The antitrust suit, *United States* v. *American Petroleum Institute et al.*, has been continued until the termination of the war."

As you know, I was not in the Senate at the time the war ended. At that time, I understand there were rumors afloat that this civil action would be dismissed. In fact, a story to that effect was carried in the New York Journal of Commerce on February 20, 1946. I have been told that when this clipping was presented to your office, Acting Attorney General J. Howard McGrath wrote the inquirer in part as follows:

"There is no basis of fact for the recent article in the New York Journal of Commerce to which you refer. The Department is not contemplating dismissing the American Petroleum Institute or any other defendant involved in that case."

I am now told that rumors are circulating to the effect that your Department intends to dismiss this suit. It is my feeling that the suit ought not to be dismissed but that vigorous effort should be made to proceed to bring the case to trial and, at this time, amend the pleadings to seek judicial divestiture of the 22 major oil companies. I am very sure that but for the imminence of war your predecessor in office would have included such a prayer for divestiture at the time of filing the suit.

This suit was based on disclosures made at the Madison oil trials, the Temporary National Economic Committee hearings and the investigations by your Department. There has been too much work put in this case to even consider its dismissal at this time. It seems to the undersigned that to dismiss would be tantamount to giving the defendants a clean bill for their many years of violation of the antitrust laws. Similarly, it would seem that those who have suffered, particularly the independents and the consumers, would be denied relief they justly deserve.

I should like to have you comment on the above and I am hopeful that it will be your policy to instruct your antitrust division to proceed with a speedy trial of this case.

With personal greetings, I am,
Sincerely,

GUY M. GILLETTE.

The attention of the Senators is now directed to the reply to the foregoing letter which I received from the Attorney General dated May 2, 1949, as follows:

Hon. GUY M. GILLETTE,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This will refer to your letter of April 13, 1949 addressed to the Attorney General regarding the status of the antitrust case entitled *United States* v. *The American Petroleum Institute, et al.* (Civil Action No. 8524), pending in the United States District Court for the District of Columbia.

This suit was filed in September 1940, against the American Petroleum Institute, 22 major oil companies and 344 subsidiaries and affiliates under various sections of the Sherman and Clayton Acts. Proceedings were suspended during the war in order to permit oil company personnel to concentrate on the war effort.

On reexamination after the war, it was decided that the suit was so large and unwieldy as to exclude any expedition and clear presentation of all the issues in a single law suit. The case involves the operations of the several hundred defendants in all four major branches of the industry, namely, production, transportation, refining, and distribution. It was decided to break the suit down into segment suits which would treat separately with antitrust problem posed at each stage of the industry. Consequently, the Department has been engaged during the past several years in preparing and filing segment suits.

At the distribution level, two suits were filed in 1947, one against Standard Oil Co. of California and the other against Richfield Oil Co., charging that the exclusive dealing arrangements between these companies and their service-station operators violated the Sherman and Clayton Acts. Upon trial of the Standard Oil Co. case, the Government received a favorable decree and the appeal has been allowed at the Supreme Court and we are now awaiting a decision. The Richfield suit is being prepared for trial. Additional suits at the distribution level are being prepared. In addition, for more than a year, the Department has been presenting evidence to a grand jury sitting in Los Angeles, with reference to the pricing practices of the oil companies in the Rocky Mountain and Pacific coast areas. This investigation is nearing completion. Investigations in the refining and transportation branches are under way and may lead to the filing of additional suits.

I wish to assure you that we are preparing segment suits as rapidly as possible to eliminate any antitrust violations in the petroleum industry. Our efforts have been Nation-wide in scope because of the country-wide operations of each of the major integrated oil companies. Action on the American Petroleum Institute case is being held in abeyance pending the completion of the above investigations and decisions concerning the feasibility of segment suits and the likelihood of substantial elimination of restraints of trade in the petroleum industry as a result thereof.

Yours sincerely,

PEYTON FORD,
The Acting Assistant to the Attorney General.

I should point out that since the receipt of the letter I have just read, the Supreme Court of the United States has affirmed the decision of the lower court in the exclusive-dealing case against the Standard Oil Co. of California, but I should also like to direct attention to the fact that the point covered in the Standard of California decision is only 1 of some 30 or more violations of the antitrust law charged against that company and 21 other defendants in the case which was docketed in 1940 as civil action No. 8524. It is also to be noted that in the third paragraph of the letter from the Attorney General, the writer states, "the Department has been engaged during the past several years in preparing and filing segment suits," while in the final paragraph of the letter, he states, "Action on the American Petroleum Institute case is being held in abeyance pending the completion of the above investigations and decisions concerning the feasibility of segment suits." It is also interesting to note the concluding statement of the letter that action on the Petroleum Institute case is dependent on

the likelihood of substantial elimination of restraints of trade in the petroleum industry, as a result thereof.

In other words, Mr. President, it appears to be assumed that the boys will run to cover, and, by the elimination of certain processes on which the original charges were based, they might, after 9 years' delay, find it unnecessary to prosecute the suits on the basis on which they were instituted, because possibly the defendants may eliminate the practices complained of. It would seem from the Attorney General's letter that they have filed two simple suits against 2 of the 22 defendants on the one question of exclusive dealing. The 20 remaining defendants and the more than 30 specific violations of the antitrust laws charged remain unattended to. It must be assumed that the Attorney General's office had evidence of the thirty-odd antitrust law violations in its files when it instituted civil action No. 8524 9 years ago, back in 1940. Otherwise, they certainly would not have filed the suit. The complaint at that time was authorized by the then Attorney General, Robert H. Jackson, now Mr. Justice Jackson, of the United States Supreme Court, and cooperating with the then Attorney General Jackson was that able exponent of enforcement of the antitrust laws, the Honorable Thurman Arnold. If the evidence was in the Department's files then, why, except for the period of the war years, has it been buried all these years. I have been informed that the able Senator from Virginia, Senator ROBERTSON, received a letter from the Assistant Attorney General Peyton Ford, dated April 15, 1949, which contained the following paragraph in discussing the suit No. 8524:

> We were satisfied at the time the suit was filed in September 1940, that we had sufficient evidence in our possession to make a prima facie case on the violations of law as charged. This evidence is still available as well as evidence secured since that date.

Yet, Mr. President, with evidence sufficient to predicate the filing of a suit 9 years ago, and the accumulation of additional evidence since that time, they are considering the possibility of dividing these suits into segment suits, of which they have recently filed two. In addition to that, there is the statement in the letter which I have just read to the effect that possibly a condition may develop which will eliminate the necessity for prosecuting the suits for which they have such complete preparation, under their own statement, involving years of study and investigation.

There is one side light I desire to mention before I take my seat, Mr. President. Inquiry at the Antitrust Division and at the Government Printing Office discloses that copies of the complaint in the civil action to which I have been referring are not available. If any Senator or anyone else wishes a copy of the complaint, it is not available. The copies have disappeared. My office has attempted to secure copies, but they have disappeared. The only way in which any Senator could acquaint himself with the situation would be to pay a personal visit to the Department of Justice and to make personal study of the file.

It is for the reason that I think a delay of this kind for 9 years is inexcusable, with a prospect that there will be additional delay based on no contingency other than the hope that the infractions on which the original suit was based will not be continued by the defendants against whom the suits were instituted, that I have asked the indulgence of the Senate during this debate on the pending bill to make this brief statement.

THE CHINESE SITUATION

Mr. KNOWLAND. Mr. President, I ask unanimous consent to have printed in the body of the RECORD as a part of my remarks an editorial which appeared in the New York Times under date of August 25, entitled "Chiang's New Role," and also to have printed a copy of the release which was issued by Secretary Johnson on August 16, 1949, when he released the text of General MacArthur's reply to the request that he testify before the combined committees, to be immediately followed by the statement to which General MacArthur refers in his cablegram, the more complete statement which he gave to the House Committee on Foreign Affairs under date of March 3, 1948.

There being no objection, the matters were ordered to be printed in the RECORD, as follows:

[From the New York Times of August 25, 1949]

CHIANG'S NEW ROLE

Though abandoned by his wartime allies and without any official government position save that of President in retirement, Generalissimo Chiang Kai-shek is again emerging as the leading figure in the attempt to rally the Chinest National forces for last-ditch resistance against Communist subjugation. He is doing so in his capacity as President of the Supreme Policy-Making Committee of the Kuomintang, which controls the Government and enables him to direct both its political and military activities to the point of appointing even the commander in chief of the army.

As President of the Policy Committee he has been negotiating with the Presidents of Korea and the Philippines for an Asiatic pact to stem the Communist tide. Now, belying reports that he is abandoning continental China and is retiring completely to Formosa, he has gone to the provisional capital of Canton and from there to the wartime capital of Chungking in an effort to unite the quarreling National factions and generals and reorganize the National defenses. His efforts are backed up by the first National counter-offensive since the debacle of Nanking—an offensive which appears to have scored at least some initial successes and demonstrates that the National regime has fight still left in it.

The reemergence of Chiang Kai-shek in the present crisis can only be ascribed to the renewed realization on the part of all Chinese National factions that he is the only man with sufficient personal authority and prestige to hold them together and perchance save them from hanging separately. Certainly all other leaders who have attempted to take his place have proved to be dismal failures.

Whether Chiang Kai-shek will succeed at this late date is, of course, another matter. The State Department is adamant against any assistance to him. But it will be noted that among those who urge new military support to the National regime is Dr. Stanley K. Hornbeck, the former State Department expert on Far Eastern affairs, who was replaced in that capacity toward the end of the war by men of a different orientation. In considering the Chinese problem Congress cannot ignore his views and those of men like him.

THE SECRETARY OF DEFENSE,
Washington, August 18, 1949.

Hon. WILLIAM F. KNOWLAND,
United States Senate,
Washington 25, D. C.

MY DEAR SENATOR KNOWLAND: My reply to your letter of August 6 has been delayed because of an exchange of communications between this office and General MacArthur. Attached for your information and files is a copy of a message which I received from General MacArthur yesterday.

With warm personal regards, I am,

Sincerely yours,

LOUIS JOHNSON.

SECRETARY JOHNSON RECEIVES COMMENT FROM GENERAL MAC ARTHUR IN RESPONSE TO SENATE COMMITTEE RESOLUTION REQUEST

Secretary of Defense Louis Johnson today made public the text of a reply received from Gen. Douglas MacArthur in response to a Senate Combined Foreign Affairs and Armed Services Committee resolution requesting that he express his views before it on the far eastern situation. Secretary Johnson forwarded the text of the resolution to General MacArthur and asked for his comment.

The text of General MacArthur's reply:

"For the reasons set forth in my public statement of August 11, I believe I can best serve the national interest by remaining at my post of duty here. This statement was as follows: 'I could not help but be deeply appreciative of the honor reflected in the desire expressed by certain distinguished members of the United States Senate that I proceed to Washington to give my views for consideration by the Congress on the issue of United States arms aid to the Government of China. I believe, however, that during this moment critical events in the Far East the interests of the American people are better served by my remaining at my post here, especially in view of the fact that the focal point of inquiry (China) is under the direct jurisdiction of the Joint Chiefs of Staff acting through a naval commander and has never been within the area of my command responsibility or authority. Furthermore, on March 3, 1948, I forwarded on request my general views on this subject to the chairman of the House Committee on Foreign Affairs. My specific views with respect to the strategic potentialties of the area embracing my Far East command are fully on file with the Department of the Army. There is little that I could add to either. While it is, of course, unnecessary for me to confirm my complete loyalty and devotion in the implementation of any directives or views of the Government with reference to my movements and duties, it is my understanding that both the President and the Secretary of Defense have made clear that my return in such circumstances is able matter for the exercise of my own judgment in the light of considerations bearing upon the national interest as I evaluate them.

"'Needless to say, it is difficult for me to ignore heartwarming and friendly overtures to return to my native land for which it is only natural for me to long just as would any one else in my circumstances. But an impelling sense of duty in a position of highly critical responsibility leaves me with no other recourse.'

"MACARTHUR."

MARCH 3, 1948.

CHINA AID PROGRAM

I am grateful to the Committee on Foreign Affairs of the House of Representatives for the confidence reflected in its desire that I appear before it to give my views on American policy in the extension of aid to China. The pressure of my operational duties in the administration of Japan, especially at this time of change in the Japanese Government, however, renders it impracticable for me to leave my post. And even were it otherwise, I gravely doubt that I could give constructive and helpful advice as to details involved in pending aid proposals, which I have not seen nor had any opportunity to study. China, as you perhaps know, is a theater of United States Navy control, outside the scope of my existing authority. I have no representatives there, and, apart from general background knowledge, such detailed information as has been available to me has been derived largely by indirection. Exhaustive investigations of the Chinese situation have been made by responsible United States officials, but these studies are not within my channel of information or command and in consequence I am not adequately familiar therewith. I have furthermore not had the opportunity to visit China for many years. With this background, you will readily perceive I am not in a position to render authoritative advice with reference to the myriad of details on which a definitive policy for this particular area must necessarily rest.

In general answer to your specific questions, I can say without the slightest hesitation that a free, independent, peaceful, and friendly China is of profound importance to the peace of the world and to the position of the United States. It is the fundamental keystone to the pacific arch. Underlying all issues in China is now the military problem. Until it is resolved little progress can be expected toward internal rehabilitation regardless of the extent of outside aid. Once it is resolved, however, there is little doubt but that China's traditional resiliency will provide the basis for rapid recovery to relative stability.

The Chinese problem is part of a global situation which should be considered in its entirety in the orientation of American policy. Fragmentary decisions in disconnected sectors of the world will not bring an integrated solution. The problem insofar as the United States is concerned is an overall one and can only be resolved on the broadest possible global basis. It would be utterly fallacious to underrate either China's needs or her importance. For if we embark upon a general policy to bulwark the frontiers of freedom against the assaults of political despotism, one major frontier is no less important than another, and a decisive breach of any will inevitably threaten to engulf all. Because of deep-rooted racial and cultural and business ties, we are prone to overconcentrate on happenings and events to our east and to underemphasize the importance of those to our west. America's past lies deeply rooted in the areas across the Atlantic but the hope of American generations of the future to keep peace with the progress of those of the past lies no less in the happenings and events across the Pacific. While fully availing ourselves of the potentional to the east, to our western horizon we must look both for hope of a better life through yet untapped opportunities for trade and commerce in the advance of Asiatic races, and threat against the life with which we are even now endowed. For beyond that horizon upon the outcome of the ideological struggles in which opposing forces are now engaged and the restoration of political, economic, and social stability, rests war or peace, assurance or threat, hope or fear.

The international aspect of the Chinese problem unfortunately has become somewhat clouded by demands for internal reform. Desirable as such reform may be, its importance is but secondary to the issue of civil strife now engulfing the land, and the two issues are as impossible of synchronization as it would be to alter the structural design of a house while the same was being consumed by flames. Friendly and searching as our interest may be in the reformation of China's institutions and practices to bring them closer into line with our own concept of liberty and justice, and right and wrong, the maintenance of China's integrity against destructive forces which threaten her engulfment is of infinitely more immediate concern. For with the firm maintenance of such integrity, reform will gradually take place in the evolutionary processes of China's future.

The flow to China of military supplies, surplus to our own requirements, has been resumed. Additional material support should be measured in equitable relation to such global aid as may be determined upon in the orientation of American policy, without underrating the strategic importance to us, as to the world, of a free and peaceful China, without ignoring her impoverishment and fatigue in consequence of so many years of violent struggle over her soil, without failing accurately to assess her potential in the stability and advancement of our own future standard of life, and without neglecting to recognize our long and friendly relationship, well tested through years of peace and years of war.

In the determination of our global policy, care must, of course, be exercised to avoid commitment of our resources beyond what we can safely spare—the sapping of our national strength to the point of jeopardy to our own security—and the overburdening of our people beyond their capacity to maintain a standard of life consistent with the energies with which they are naturally endowed. For it would be illogical for us to yield our own liberties in the safeguard of the liberties of others—to forfeit our own heritage of freedom in securing the freedom of others. No less illogical would it be to extend our material aid beyond hope of reciprocal repayment through contribution in one form or another to human progress. For it would not serve our purpose merely to create in return for our sacrifice a condition of indigence and mendicancy elsewhere, to become a brake upon human advancement.

It is one of the traditional characteristics of the American people that in times of great crises they have never failed to rise to masterful heights to meet the challenge of the time. Never before has our wise, fearless, and positive leadership of a confused world been more needed as a stabilizing influence. Never before have the American people been more ready to assist others if it be a purposeful sacrifice. For we on American soil bare before the eyes of the entire world the workings of a way of life which despite the veil of confusion and disorder and self-serving ambition is the cherished hope and goal of all mankind. Let us, above all else, preserve it.

MACARTHUR.

NOTE.—The above message despatched to the Honorable CHARLES A. EATON, chairman, Committee on Foreign Affairs, House of Representatives, by radio ZX-40728, dated March 3, 1948, in response to a radio received from him inviting General MacArthur to appear before the Committee on Foreign Affairs to give his views on what American policy should be with respect to proposals of aid to China and other critical areas in the Far East. He also requested that if it were impracticable for the General to appear in person that he send a statement presenting his views. The radio was released to the press in the United States on March 4, 1948.)

Mr. KNOWLAND subsequently said: Mr. President, I wish to read to the Senate a policy statement by the foreign affairs committee of the American Legion, approved by its executive board at its meeting in Philadelphia yesterday:

PHILADELPHIA, PA., *August 30, 1949.*

Senator WILLIAM KNOWLAND,

Senate Office Building:

Our long friendship and common causes with the Chinese prompt a policy of not abandoning this area to Communist aggression. Full support should be made available to any groups or organizations that can be supported by our Government, who will fight the forces of communism and outside aggressors in order to preserve the basic rights and liberties of a free China.

We particularly urge our Government to lend its aid in forming a regional pact, under article 51 of the United Nations Charter, composed of those freedom-loving countries of the Pacific and Far Eastern area who, through self-help and mutual aid, desire to guarantee their mutual defense and to preserve individual liberties.

LEON HAPPELL.

In addition to the telegram, Mr. President, and in connection with previous requests I made to have printed in the RECORD, as a part of my remarks, quotations from General MacArthur's message to the House Foreign Affairs Committee in April 1948, I wish to call to the attention of every Member of the Senate—and I shall ask unanimous consent to have the entire article appearing today printed in the RECORD as a part of my remarks—a series of articles, beginning today, by Mr. David Sentner, of the International News Service. I merely want to read from the first paragraph or two of this series of articles, which will be published during the next week. It is an article which begins in this way:

The Far East is America's new frontier.

The Soviet Red flood in China must be beaten back before it sweeps through Asia and laps the shores of the United States. Otherwise, world war III is inevitable.

China may not yet be lost to the Communists.

That is General MacArthur, military master of the Pacific, speaking.

"The Red roll in China must be stopped," he said.

"It must be fought anywhere and everywhere.

"It is not that we are pro-Chinese or pro-Nationalist but only that we must be anti-Communist.

"What would do the most good right now would be a ringing announcement that we will support anyone and everyone in China and the Far East who is fighting communism.

"This would have an effect like adrenalin on the morale of all Asia."

Mr. Sentner made these as direct quotations from his interview with General MacArthur. He goes on with his article. I believe it is an important series of articles, since the combined committees were unable to get General MacArthur here to give his testimony. Because of the serious situation in the Pacific area, I think this series of articles should be "must" reading for the Members of the Senate. I ask to have the entire article printed in the RECORD as a part of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Journal-American of August 30, 1949]

MACARTHUR URGES CHINA AID TO HALT RED DRIVE IN ASIA—WORLD WAR III SEEN IF UNITED STATES FAILS TO ACT—GENERAL TERMS FAR EAST NEW FRONTIER OF AMERICA

(What is really happening in China? Can China be saved from the Communists? How does communism in Asia imperil the United States? David Sentner, ace Washington correspondent of the Hearst newspapers, makes his first report from a 20,000-mile plane trip through the Orient to learn what can be done to roll back the Red tide. In Tokyo he talked to Gen. Douglas MacArthur, America's famous Pacific warrior and outstanding authority on the Far East. What General MacArthur might have told a Senate committee regarding his views on the Red menace in the Pacific, if he could have detached himself from his vital post, is revealed in the following article, first of a series.)

(By David Sentner)

The Far East is America's new frontier.

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That is General MacArthur, military master of the Pacific, speaking.

WE MUST STOP COMMUNISM

"The Red roll in China must be stopped," he said.

"It must be fought anywhere and everywhere.

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"What would do the most good right now would be a ringing announcement that we will support anyone and everyone in China and the Far East who is fighting communism.

"This would have an effect like adrenalin on the morale of all Asia."

I made Tokyo my first news-gathering halt in a a 20,000-mile flying trip in search of the real truth about China and the Communist threat in the Pacific.

General MacArthur invited me to lunch at his home in the American Embassy. This meal is considered his major relaxation period in a 14-hour day of hard work, 7 days a week.

TELLS OF MOUNTING DANGER

As he sat erect across from me with romanesque profile and tunic open at tanned throat the general looked in fighting trim.

We talked for more than 3 hours, with the chic and charming Mrs. MacArthur listening quietly and intently.

This meal was hardly relaxation for the general as he neglected his food, speaking intensely about the mounting danger to our country from the global machinations of the Soviet Union.

Was China going all-out Red? Was it too late to help the National Government forces?

General MacArthur, in replying, emphasized that he necessarily spoke unofficially and only as a military man. China, under the theater of the Navy, was outside his scope of authority, he pointed out.

However, speaking strictly across a luncheon table, he thought—

That China was not gone.

That China was now more a military than a political problem.

That the Chinese Red Army is not as good as the Japanese Army which the Nationalist forces held off and eventually pushed back.

That an effective Nationalist naval blockade of Red Chinese coastal territory plus aerial strafing could possibly change the situation.

That a military miracle for the Nationalist forces was not impossible.

"I go along with General Chennault," General MacArthur added bluntly.

Major General Chennault, famous wartime commander of the Flying Tigers, insists that a few hundred million dollars spread over the next few years in American aid to China could turn the tide against the Chinese Reds.

General MacArthur warned that America's destiny lay in the Far East.

STRESSES VAST OPPORTUNITIES

He urged that the United States be awakened not only to the danger posed by the flaming Red sword over Asia but to America's limitless future in the far Pacific.

The westward march of America did not stop when we reached the edge of the Pacific, he said.

A vast new opportunity for trade and commerce dwarfing anything in our history could be over the Pacific horizon.

A billion people, more than half the world's population, are in Asia, hungering for American initiative and business enterprise to free them from poverty, malnutrition, and an ox-like existence.

It was bosh to think that the people of Asia would not go for the American way. Human beings were the same everywhere, regardless of race, in their craving for liberty and a better life.

The successful guidance of the Japanese along the path to democracy by the American occupation authorities showed that it could be done, the general pointed out.

MAC ARTHUR'S MIRACLE IN JAPAN

The new MacArthur miracle was apparent from the time my Pan-American plane fought through "Typhoon Gloria" to a safe landing at the Tokyo airport.

Japan was transformed into a breakwater of democracy against the churning Red surf in the Pacific.

The Japanese have stopped bowing before the emperor's palace. They even fish in the moat around the imperial palace. In Tojo's day such desecration meant the death penalty.

Once again the Japanese are playing baseball and Babe Ruth is still the national hero. The sand lots are so jammed that sometimes the same second base is used for two separate baseball games.

It used to be that Japanese women walked several steps behind their men. Now, Japanese couples walk hand in hand in imitation of the GI's out strolling with their girls.

The occupation authorities have taught the policemen to be friends of the kids. And the Japanese adults have learned not to be afraid of policemen, even talking back to them.

MacArthur truly has brought democracy to the Orient.

MINIMUM-WAGE STANDARD

The Senate resumed the consideration of the bill (S. 653) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Florida [Mr. PEPPER] on behalf of the committee, on page 40, lines 13 and 23, and on page 41, lines 7 and 16.

Mr. MURRAY. Mr. President, I rise to address the Senate briefly in support of the pending measure, providing for the amendment of the Fair Labor Standards Act of 1938. I am supporting the bill as unanimously reported by the committee. Although it was my hope that many more improvements would be made in the Fair Labor Standards Act than are provided for in the bill, particularly a much-needed extension of the benefits of the act to employees who do not now enjoy protection, nevertheless, in the interest of achieving a desperately needed increase in the minimum wage, I am supporting the bill, together with the amendments agreed to by the committee.

Among the legislative matters before the Congress today, few, if any, are more vital to our economic welfare than increasing the minimum-wage rate. The 40-cent rate was inadequate when enacted, and has long been outmoded by rising costs of living and increased production. The modest 75-cent minimum rate recommended by the committee would do little more than correct the 40-cent rate to meet the increases in the cost of living since 1938. It makes practically no allowance for increased productivity during the past 10 years, and in effect denies a fair share of the fruits of that increase to the workers. The committee feels that our economy could support a minimum-wage rate well in excess of 75 cents, but we have confined our recommendation to this low figure in order to remove every possible objection to immediate enactment of a 75-cent standard.

I cannot conceive of anyone seriously questioning the fact that a 75-cent minimum is nowhere near high enough to provide the minimum standards of living necessary for health, efficiency, and general well-being of workers, which is the primary objective of the act. A 75-cent minimum, assuming steady employment, would give the worker an annual income of only a little more than $1,500. This is not sufficient to provide an adequate minimum standard even for single workers, which would require over $1,700 annually in the lower-cost areas. Workers with families would obviously require considerably more. But while the 75-cent minimum would not provide the lower-paid workers with a decent minimum standard of living, it would improve their lot considerably. It will not enable them to buy automobiles or refrigerators or to send their boys to college, but it will provide their families with more nutritious food, and warmer clothing, and will enable many of them to keep out of debt.

The 1,625,000 underpaid workers who would directly benefit from the new minimum are primarily unorganized workers who are paid low wages because of poor bargaining power, but who contribute just as much to the Nation's prosperity as do more fortunate workers. A 75-cent minimum would enable these underpaid workers to participate a little more in the gains of our postwar economy. It would improve somewhat the position of these low-paid unorganized workers in relation to the more highly paid workers protected by collective-bargaining agreements.

The 75-cent minimum would eliminate unfair competition resulting from payment of substandard wages, at least at its worst levels. It should be emphasized that this form of unfair competition is not in most cases the choice of the individual employer. In low-wage industries, the many fair-minded employers are pre-

vented from paying decent wages only by the fact that their competitors would be given a great advantage if they voluntarily increased their wage costs. Other employers who are now paying decent minimum rates are suffering from unfair competition by competitors who pay substandard wages. Any decline in prices may force these employers to decrease wages in order to meet unfair competition. A 75-cent minimum would make it possible for all employers to carry on their business without degrading the living standards of their workers.

Although a 75-cent minimum rate would be of tremendous benefit to low-paid employees, it would have little impact on our economy. In industries subject to the act, as revised by S. 653, only 1,625,000 of the 22,900,000 covered employees now receive less than 75 cents an hour, and most of these underpaid employees receive more than 65 cents. The increase in wages required to bring these underpaid employees to 75 cents would be less than 1 percent of the total wage bill for all covered employees.

I am surprised that there is any opposition to this modest minimum wage rate. I expected that the same interest groups who in 1938 predicted that the 40-cent minimum would ruin the Nation would repeat the same prediction regarding the 75-cent proposal. But I did not expect that some newspapers, news broadcasts, and commentators would lend themselves to a campaign to discourage enactment of a decent minimum wage by presenting readers and listeners with predictions of rejections by this Congress of the meager 75-cent rate. Many of these stories were nothing but malicious gossip, which reflected on the motives of Members of Congress as well as on the good sense of the American people. But a few went on to seriously question the practicability of a 75-cent minimum rate. Think of it, supposedly well-informed editorial writers and columnists questioned the ability of this Nation, with an annual income of more than $200,000,000,000, to provide a 75-cent-an-hour wage to employees who now earn less than $1,500 annually. They predicted dire economic consequences if the wages of these underpaid employees were increased by $325,000,000—a fraction of 1 percent of the total national income. These supposedly well-informed advisers to the public did not even stop to consider the obvious contradiction between their predictions and the fact that the wages and salaries of all workers were increased last year alone by $12,000,000,000. And much of this $12,000,000,000 increase was received by highly paid employees and not those underpaid workers who happen to be the victims of ill-managed industries and incompetent employers.

Some of my colleagues may be thinking, "These averages and national totals are very impressive, but what about the effect on particular industries in low-wage areas? How can they adjust to a 75-cent minimum?" Let me assure them that I am mindful of the serious problems of adjustment which would be found by some industries. I have listened attentively to the statements which their spokesmen have made before the committee and have given their special situations much study. I am convinced that these industries can adjust to a higher minimum with no increase in the number of firms going out of business, with no decrease in employment, and with great benefit to their employees and to the general welfare of the areas in which they operate.

Let us consider the problems of one of these industries, the southern sawmill industry. The southern sawmill industry would no doubt face more serious problems of adjustment than would many other industries. But the witnesses before the committee who stated that the effects of a 75-cent minimum on the industry would be disastrous grossly exaggerated the effect on their industry. The committee was told that 75 percent of the employees of the southern lumber industries earned less than 75 cents. A Bureau of Labor Statistics survey of September and October 1946 was cited showing 82 percent earning less than 75 cents at that time. Since that time average hourly earnings in southern sawmills have increased from 71 cents to 81 cents, and the percentage of employees earning less than 75 cents has decreased substantially.

Compared to the effect on all industries in the Nation as a whole, the southern sawmill industry will be more seriously affected by a 75-cent minimum, and it is not my purpose to minimize that effect. But the industry will be able to adjust to the new minimum.

An indication of the ability of this industry in the South to adjust to a 75-cent minimum is afforded by a review of experience since passage of the act in 1938. In April 1939, after the 25-cent minimum had been in effect for 6 months, 75 percent of the employees of southern sawmills were found by the Bureau of Labor Statistics to be earning less than 30 cents an hour. Moreover, many of these workers only 6 months before were earning less than 10 cents an hour, so that their earnings had to be increased by two and one-half times to bring them up to the 25-cent minimum. The 1938 act required a much more drastic adjustment by the southern sawmill industry than will the proposed 75-cent minimum. Yet the industry adjusted to the 30-cent rate, which went into effect in October 1939, and went on to improve the wage level to such a degree that in June 1941 a tripartite industry committee was able to recommend a 35-cent minimum rate, and this, remember, was before the tremendous expansion of the industry in response to war needs.

Since 1939 average hourly earnings in southern sawmills have increased from 33 cents to 81 cents, or about 150 percent. Lumber prices, however, have increased over 200 percent and prices for southern pine considered separately have also increased over 200 percent. Even if the slight decline in prices which has occurred since last August should continue, the industry is well able to adjust to a new minimum.

Close analysis of the problems of other low-wage industries, such as fertilizer, cotton garments, cotton gins, and tobacco will support the same conclusion, that while these industries will be substantially affected by an increase in the minimum-wage rate, they will be able to make a satisfactory adjustment to a 75-cent rate. Furthermore, the 75-cent minimum will have less effect than the original 25- and 30-cent minimum, or the 40-cent minimum established by industry committee action or the voluntary increases in wages made during recent years.

Opponents of minimum-wage legislation have made much of the possible indirect effects on wages above the minimum as a reason for not adopting decent minimum-wage standards. Their argument is that occupational differentials must be maintained, and that, therefore, any increase in the wages of underpaid employees must be matched by an increase in the wages of all other employees. There is a germ of truth in this argument, but the magnitude of these indirect effects has been, to say the least, grossly exaggerated. Obviously, occupational differentials in a steel mill with a $1-an-hour entrance rate would not be affected by a 75-cent minimum. Similarly, it is nonsense to suppose that the wages of a sawmill worker in the Northwest who receives $1.50 an hour will be affected by an increase in the wage of a southern sawmill worker to 75 cents. It is only in plants which pay some workers less than 75 cents that there need be any effect at all on rates above 75 cents. Such plants employ only a small proportion, certainly less than 25 percent, of all covered workers.

Even in these plants the indirect effects will be moderate. Skilled workers in such plants are frequently paid very high rates, which are the result of scarcity of skilled labor and superior bargaining power. The Bureau of Labor Statistics states that in many industries the wage differentials between skilled and unskilled workers are relatively greater in the southern regions than elsewhere in the country. Certainly, a modest increase in the wages of low-paid workers need not result in a similar increase in the rates of these high-paid employees, in order to maintain an abnormally great wage differential.

Thus an increase in the minimum to 75 cents would add only a small amount to wage bills, and most firms could well afford to absorb the increased amount. Some of the increased cost may be more than offset by the increased productivity of better-nourished and healthier workers, with greater peace of mind about their ability to meet their household expenses. Some firms will also find it possible, under pressure of increased wage costs, to introduce more efficient methods of operations and thus pay higher wages with no increase in prices and no decrease in profits. Many of the low-wage plants could decrease profits and still have a reasonable return. A few slight increases in prices may result, but the magnitude of this type of adjustment would be nowhere near as extensive as that resulting continuously from wage increase made voluntarily or through collective bargaining.

Opponents of minimum-wage standards have made much of the fiction that low-paid workers are nonproductive

workers and are not worth a decent wage. I am certain that most Members of the Senate realize that this is utter nonsense, and that it grossly insults the less-fortunate Americans who find themselves employed in low-wage industries. Their wages are not low because they work less hard or have less skill than higher-paid workers. The low wages of many industries can only be understood as a result of chance economic and social forces beyond the control of either the low-paid employees or of his employer. There are many examples of such industries in which wages have been raised to a higher level as a result of union organization. The workers who now earn less than the 75 cents are preponderantly the unorganized workers whose wages remain low because of a weak bargaining position. They are not obtaining their fair share of the goods and services which they helped to produce.

In times like these, wages below 75 cents an hour are definitely substandard wages. An industrial establishment which continues to pay wages considerably below subsistence is a substandard establishment. It is being subsidized at the expense of the lowest paid, neediest workers, those least able to bear it. An employer who can stay in business only by paying subminimum wages is a hazard to our whole economy. His unfair competition threatens the higher labor standards which his fair-minded competitors desire to maintain. The existence of such substandard wages sharply curtails the purchasing power and narrows the markets for the products of our farms and factories. Such substandard wages degrade our people, and contribute to such social evils as sickness, high mortality, illiteracy, juvenile delinquency, and crime.

Even if the cost of living should decline somewhat from its present all-time high, 75 cents would still not constitute a high minimum wage, although this would result in a slight increase in the meager real income of the worker at the minimum level. For there is no reason to expect any substantial decline. There are many factors in our present economy to prevent this, such as the level of the national debt, the price-support policy for basic agricultural products, the stability of wages established by union contracts, and the demand for our products for European recovery and for defense. A reasonable minimum wage would constitute an additional factor against any marked decrease in the price level. It would help bolster purchasing power where it needs bolstering and serve to stabilize economic activity.

It is a matter of record, not of opinion, that people with the smallest income spend the largest percentage of their income. The families with just enough to get along on, or with less than enough, obviously cannot save anything. They spend all their earnings. An increase in the purchasing power of the underprivileged will go far toward bolstering the market for goods. The 75-cent minimum wage will enable them to buy more clothes and to eat better food. Instead of bread, potatoes, and beans, they can buy fresh fruits, meat, fresh vegetables, and enough milk, butter, and eggs. Farmers need a market for their products at reasonable prices, and low-wage employees need increased income to buy better food. Those interested in the welfare of farmers should realize this common interest of the farmer and the low-paid industrial employee.

Finally, I firmly believe that America can afford and should provide wages which will guarantee a minimum standard of decency for all of its citizens. Our system of private enterprise does not mean the right of some to exploit others. It is not and has never been synonymous with privilege nor with privation. We pride ourselves on our high living standards, and our Nation is thought of in other lands as the land of promise—including the promise of a decent standard of living. A reasonable minimum is a measure of that promise.

We of the Democratic Party are committed to this philosophy. The platform which we presented to the voters specifically promised a minimum wage of at least 75 cents an hour. This promise of our party was repeated countless times during the 1948 election campaign. It was one of the basic tenets of the program which won overwhelming support for Democratic candidates. To fail to approve a minimum rate of at least 75 cents would be to fail to carry out this clear mandate. Can any Democrat or any Republican who made similar campaign commitments now go back to his constituents, confess failure to give full support to this 75-cent minimum-wage proposal, and expect to retain their confidence? The American people demand that this modest step toward better living for its underprivileged workers be taken by Congress, and I ask all forward-looking Members to join with me in its support.

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed at this point in the RECORD remarks prepared by me dealing with the pending measure.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

NOTES IN SUPPORT OF A 75-CENT MINIMUM WAGE

Mr. President, for several years there has been practically unanimous agreement that the minimum wage provisions of the Fair Labor Standards Act of 1938 are outmoded and need to be revised in the light of changed economic conditions. In order to effectuate this purpose, committees of both the House and Senate have conducted investigations and held exhaustive hearings over a period of some 4 years. Thus far, however, no amendments have been enacted and as a result, the obsolete 40-cent standard is still the law of the land. This standard is admittedly grossly inadequate to effectuate the public policy stated in the preamble to the Fair Labor Standards Act, namely, to eliminate labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers. Moreover, a 40-cent minimum offers virtually no protection against a vicious spiral of wage cutting which may occur as a result of the present downward adjustments of business activity.

It is therefore not only highly propitious to take this action now but absolutely imperative that the Congress increase the legal minimum wage during its present session in order to assure that the wages of low-paid workers will remain at reasonably decent levels and that there will be no recurrences of the wage and salary slashing which would destroy the purchasing power necessary to maintain our mass consuming markets. Obviously if this objective is to be accomplished, the minimum wage level should be established high enough to provide genuine support for the wage structure.

The unanimous opinion of the members of the Senate Labor Committee is that no minimum of less than 75 cents an hour is really sufficient to carry out the goals of our national minimum wage policy. Legislation incorporating an hourly minimum rate of at least 75 cents has been urged by the Administrator of the Wage and Hour Division and supported by the Secretary of Labor and the President of the United States. These recommendations were made on the basis of careful study of the various factors involved and after years of experience in administering minimum wage legislation. The committee nevertheless has made its own independent investigation of the appropriate level of the minimum wage and, after protracted hearings and exhaustive testimony, has determined that all important segments of the American economy can adjust to a 75-cent minimum without undue economic hardship and that no rate of less than 75 cents an hour will protect the current wage levels of our lower-paid workers or permit them to maintain reasonably decent standards of living.

The level of a proposed minimum wage must be judged from a number of points of view. Of prime importance, of course, is the economic feasibility of a particular minimum rate. In addition, consideration must be given to the benefits which will accrue to individual workers receiving low incomes and to the over-all social and economic effect of maintaining and improving the living standards of low-wage workers.

With relation to a 75-cent minimum, the Wage and Hour and Public Contracts Divisions of the Department of Labor estimate that 1,625,000 of the more than 22,900,000 workers covered by the minimum wage provisions of the committee's bill are currently earning less than that rate. The majority of these 1,625,000 low-paid workers are receiving within 10 to 15 cents an hour of the proposed 75-cent mnimum so that the over-all dollar cost of putting such a rate into effect would amount to less than 1 percent of the wage bill for all employees covered by the act. Moreover, only about one-half of all employees other than governmental employees, are subject to the minimum wage provisions of the Fair Labor Standards Act. Accordingly, the adoption of a 75-cent minimum hourly rate would cause an increase in total national income derived from employment of less than half of 1 percent. It is difficult to conceive that anyone would seriously contend that such a small increase in employment costs could have any major repercussions on our national economy. Admittedly, some individual industries will have more difficulty in adjusting to higher minimum wage standards than others but from the standpoint of the Nation as a whole, it seems obvious to me that a 75-cent minimum is not only economically feasible but indeed a very conservative level for the minimum wage under current economic conditions.

In evaluating a minimum wage, too much emphasis is frequently given to the estimated dollar cost of raising the earnings of workers receiving below a given rate. In actual practice, adjustments to higher minima follow a number of different patterns which result in a material reduction in the apparent cost increases which will be occasioned by an increase in the minimum rate. Even if such were not the case, however, the pay roll increase involved in adjusting to a 75-cent minimum is so modest that the full cost

can very readily be absorbed by the economy without any appreciable impact.

While I am still discussing the minimum wage primarily from the employer's point of view, I should like to point out that the most frequent reason given by manufacturers for their inability to pay more nearly adequate wage rates lies in the fact that their competitors are able to obtain labor at lower standards. With a uniform minimum of 75 cents an hour, however, this argument loses its validity and most fair-minded employers admit that they can adjust to such a rate if other members of their industry are required to observe a decent legal standard.

The factor of competition is equally important in maintaining current wage rates. For example, firms employing the majority of workers in the cotton-textile industry are paying a minimum rate of 94 cents an hour or higher at the present time and are perfectly willing to continue doing so as long as competitors within their industry pay comparable rates. However, with the current weakness in textile markets, a few nonunion firms are beginning to trim their wage rates, and if this trend continues and gains momentum, the cotton-textile industry could again become one of the lowest paying industries in the country.

Such a development would have a profound effect on the economy of New England, but the effects in the Carolinas, Virginia, Georgia, Alabama, and other Southern States would be little short of disastrous. The notable progress which these States have achieved during the past generation in raising the living standards of their working people might be entirely wiped out if a spiral of wage cutting gets underway in the textile industry. Moreover, this is no idle postulation, for at least one cotton mill in Georgia has recently slashed its rates by 25 percent and another by 18 percent. If this type of dog-eat-dog competition is allowed to continue unchecked, it is obvious that the income and purchasing power of entire communities in the South will be drastically reduced.

Fortunately, this Congress has within its power ability to set a floor under wages to check this type of deflationary spiral which can and only in bankrupt firms and poverty-stricken workers. Admittedly, a 75-cent minimum offers very limited direct protection to a worker now receiving a minimum of 93 cents an hour or more, but in view of the apparent impracticability of attaining a higher rate in the immediate future, it will at least prevent a very grave collapse of purchasing power among the masses of low-income workers. For the Congress to vote any lesser rate than 75 cents would appear to me to invite economic disaster. In fact, if we fail to pass a minimum of 75 cents, I think we shall not only be missing one of our greatest opportunities to forestall a depression, but we shall be seriously negligent in our duties toward all of our constituents. For let me point out that an increase in the minimum wage to 75 cents is not just a measure which will protect low-income workers. It offers insurance, albeit in my opinion too limited, to businessmen, farmers, and higher-income workers that the spiral of deflation cannot continue beyond that floor and that mass purchasing power will not dry up. This in turn will restore a degree of confidence among our industrial and financial communities and prevent purchasing agents and consumers from waiting until the wages of the workingman have been badly squeezed before they renew their normal volume of buying.

Thus far, I have spoken of a 75-cent minimum in terms of its effect on industry and the national economy. I should like now to shift my discussion to an analysis of what a 75-cent minimum means to the individual workers. The Congress has declared its objective to be the elimination of labor conditions detrimental to the maintenance of a minimum standard of living necessary for health, efficiency, and general well-being of workers. How closely does the income permitted by a 75-cent minimum come toward obtaining this objective?

In answering this question, I should state that an employee working a normal schedule of 40 hours per week will gross approximately $1,500 annually. In many industries, seasonal fluctuations and temporary lay-offs will not permit the attainment of this income level. However, let us assume that the worker at the minimum of 75 cents enjoys relatively full employment throughout the year; will his income of $1,500 permit him to live at a decent minimum standard of living?

In conjunction with the enforcement of their minimum-wage laws, some 12 widely scattered States and the District of Columbia have undertaken postwar surveys of the costs of a minimum adequate budget for single persons without dependents. These studies included costs in many smaller communities as well as in the metropolitan centers. Nevertheless, adjusted for present-day living costs, a minimum decent standard of living in any one of these areas would cost in excess of $1,700 per annum and in many instances the cost would be considerably more. It is obvious, therefore, that the cost of living will have to decline very substantially before a single worker without dependents or outside obligations will be able to support himself at a reasonably decent minimum standard of living with a 75-cent minimum. If the Congress should enact any lesser rate than 75 cents, it is apparent that we shall fall hopelessly short of accomplishing the very minimum objective of our national fair labor standards policy. For the above conclusion pertains only to a single worker whereas it is a well-known fact that the vast majority of our working people necessarily support one or more dependents, and this is characteristically the case with workers at the minimum wage.

It is apparent that from the worker's point of view, any minimum of less than 75 cents an hour would fall miserably short of the objectives of national minimum-wage policy. In fact, any minimum of less than 75 cents would represent no improvement over the admittedly inadequate purchasing power afforded by a 40-cent rate in the prewar period.

Similarly, from the point of view of the fair-minded manufacturer, a rate of at least 75 cents an hour is required to prevent unfair competition from firms paying extremely low wages. I have illustrated this by citing the situation in the textile industries but the problem is by no means confined to any single industry or group. Of course, many of the large basic industries which pay minimum rates of $1 an hour or more, such as autos, primary metals, coal mining, etc., are highly organized and it may be presumed that the unions in these industries will be able to protect their members from drastic wage declines. In addition, however, there are innumerable smaller industries which are highly competitive but only partially organized, that are now paying minimum rates of 75 cents an hour or higher. With the current downturn in economic activity competition among these smaller businessmen will make it practically impossible for them to preserve their current wage standards in the absence of statutory protection. Many of these employers do not want to reduce their wage rates and have dissatisfied employees living at indecently low standards of living. They realize full well that in the end wage slashing simply leads to depression and benefits no one. Yet they are helpless to prevent this course in the absence of a fair legal minimum and many of them have accordingly urged that the Congress take prompt action to head off the threatening deflationary spiral. Thus, it is apparent that on the question of a 75-cent minimum, the interests of labor and fair-minded farsighted management are united.

What other groups are concerned with a 75-cent minimum for employees subject to the Fair Labor Standards Act? The worldwide depression of the thirties proved convincingly to the American farmer that his economic welfare is inexorably tied to the prosperity of the urban worker who provides his mass markets, for if the unskilled laborer cannot buy meat and milk, the repercussions on our agricultural economy are very severe. In fact, a reduction in the purchasing power of low-income industrial workers is almost invariably accompanied by a disproportionately large fall in farm income. Farmers, therefore, have an enormous stake in the maintenance and improvement of incomes of low-wage workers for their markets depend upon such workers receiving sufficient incomes to afford adequate diets.

Manufacturers, merchants, and employers in the service trades are in a position similar to that of farmers. The vast majority of them cater to the mass consuming markets and their sales patterns follow closely the trends in purchasing power of the working population. Of course, their profit margins are even more sensitive and fluctuate much more sharply than their sales. So the welfare of these groups is also closely bound with the prosperity of the masses and their interests also demand that low-income workers receive income sufficient to permit them to buy at least the necessities of life.

It may be presumed since all of the other economic interests would benefit directly or indirectly in the maintenance and improvement of the living standards of low-income workers that only the consumer would pay. Even if there were no counterbalancing factors and the full monetary cost of a 75-cent minimum fell upon the consumer, the effect on the cost of living would be very small, probably around one-third of 1 percent. This amounts to less than one-tenth of the recent reductions in the cost of living which the consumer has enjoyed. While this negligible percentage can scarcely be characterized as an undue hardship, in actual practice the counterbalancing factors might outweigh even this small cost. For example, most consumers also receive income as producers and almost every group of producers would benefit directly or indirectly by a higher minimum. Similarly, all consumers are taxpayers and in one way or another the social and economic wastes of indecently low wage standards are passed along to the community through relief payments, cost of crime and crime prevention, and the innumerable additional items that are the inevitable concomitants of poverty. Thus, the additional cost of merchandise to the consumer might well be offset against his tax bill.

Low wage rates are not necessarily an index to low over-all costs and higher minimum wage standards frequently spur management to adopt more efficient techniques. Thus the United States has the highest wage standards in the world but in a wide variety of fields, American prices are also the lowest in the world. Similarly, individual manufacturers who pay among the highest wage rates in a given industry also are among those with the lowest total costs. When faced with higher wage standards, other manufacturers can also adopt more efficient techniques and work lay-outs and thereby utilize their labor forces more effectively. In fact, such adjustments are constantly taking place in the American economy and after a brief lag during the late war and early postwar periods, the productivity of the average American wage earner has now begun to rise. Moreover, it is reasonable to anticipate that increasing output per man-hour will be experienced from now on owing to the lower turn-over of labor and the ability of manufacturers and other businessmen to obtain the latest types of machinery and other

equipment. It is obvious that the incidence of a 75-cent minimum upon the cost of living and thereby upon the consumer as such will be negligible.

In conclusion, I should like to state that in my opinion a legal minimum wage of 75 cents an hour is in the best interests of all groups in our Nation and that the immediate adoption of this rate is urgently needed to forestall a depression of our living standards and the unhappy consequences of too drastic deflation. I therefore strongly urge the approval of the committee's bill.

Mr. HENDRICKSON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hill	Myers
Anderson	Hoey	Neely
Brewster	Holland	O'Conor
Bridges	Humphrey	O'Mahoney
Butler	Ives	Pepper
Byrd	Johnson, Tex.	Reed
Capehart	Johnston, S. C.	Robertson
Chapman	Kefauver	Saltonstall
Chavez	Kem	Schoeppel
Connally	Kerr	Smith, Maine
Cordon	Kilgore	Smith, N. J.
Donnell	Knowland	Sparkman
Douglas	Langer	Stennis
Dulles	Leahy	Taft
Eastland	Long	Taylor
Ecton	Lucas	Thomas, Okla.
Ellender	McCarthy	Thomas, Utah
Flanders	McClellan	Thye
Frear	McFarland	Tobey
Fulbright	McKellar	Tydings
George	McMahon	Vandenberg
Gillette	Magnuson	Watkins
Graham	Malone	Wherry
Green	Martin	Wiley
Gurney	Miller	Williams
Hayden	Millikin	Withers
Hendrickson	Mundt	Young
Hickenlooper	Murray	

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the amendment offered by the Senator from Florida on behalf of the committee, which will be stated.

The CHIEF CLERK. On page 40, beginning with line 13, it is proposed to strike out down through "(11)" in line 16 and insert "by striking out the period at the end thereof and inserting a semicolon and the following: 'or (12)'."

On page 40, beginning with line 23, it is proposed to strike out through line 6 on page 41.

On page 41, lines 7 and 16, it is proposed to strike out "(c)" and "(d)" and insert in lieu thereof "(b)" and "(c)", respectively.

Mr. BUTLER. Mr. President, I have the impression that the amendment just read by the clerk may make it unnecessary to consider the amendment which I have proposed, affecting grain elevators.

Mr. PEPPER. Mr. President, I should like to answer the question, but I was about to ask that the pending amendment be laid aside for the time being and that we proceed with one of the other amendments, because a certain Senator wishes to be present when this amendment is considered.

Let me answer the able Senator from Nebraska by stating that the effect of the amendment is to restore the law to its present content and provisions on the subject of area of production. That is the amendment which the committee decided to offer to retract from the provision of the bill under which minimum wages would be required to be paid in the processing of agricultural commodities within the area of production. But if this amendment is adopted, then the part of the present law exempting the processing of agricultural commodities in the area of production will be continued, and such workers will get neither the minimum wage nor the overtime the law otherwise would allow.

But, Mr. President, I ask that this amendment be temporarily laid aside, and that we take up amendment lettered "D—8–29–49."

The PRESIDING OFFICER. The amendment will be stated.

The CHIEF CLERK. On page 41, after line 17, it is proposed to insert the following:

Section 14 of such act is amended by striking out in clause (1) the words "and of messengers employed exclusively in delivering letters and messages," and inserting in lieu thereof "and of minor messengers under 18 years of age employed primarily in delivering letters and messages."

Mr. PEPPER. Mr. President, as I explained yesterday, this is one of the committee amendments. It was offered at the suggestion of some of the messenger companies, especially the Western Union Telegraph Co., who felt that they should have the right to apply to the Administrator for a certificate permitting them to pay less than the statutory minimum wage to messengers who are engaged primarily in the delivery of their messages, and who are under 18 years of age. We understand that the amendment does not require the Administrator to give such a certificate, but merely gives these companies the right to apply for a certificate.

I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment lettered "D."

The amendment was agreed to.

Mr. DOUGLAS. Mr. President, I wonder whether the Senator from Florida will make somewhat clearer the exemptions which the committee is proposing and the present conditions concerning the area of production as named in the act. It is my understanding that it exempts all cotton gins in the so-called area of production. Is that correct?

Mr. PEPPER. That is correct.

Mr. DOUGLAS. I further understand that it exempts all tobacco warehouses and tobacco storage sheds.

Mr. PEPPER. It does.

Mr. DOUGLAS. Does it exempt grain elevators in the area of production?

Mr. PEPPER. That is correct. I thank the Senator for the privilege of reading the pertinent provisions of the Fair Labor Standards Act of 1938, which the amendment would restore in effect, in regard to this particular matter.

Mr. ROBERTSON. Does this amendment in effect restore that part of the present law?

Mr. PEPPER. It does.

Mr. ROBERTSON. The present situation, with the farmers facing surpluses, is such that we do not wish by act of Congress to place an additional burden on the farmers, a burden which would come back on them in terms of lower net prices.

Mr. PEPPER. That is exactly the point.

Mr. THYE. Mr. President, if the Senator will yield to me, let me inquire whether it includes creameries which process buttermilk.

Mr. PEPPER. Let me read the provision of the present law which would thus be continued:

To any individual employee within the area of production, as defined by the Administrator, engaged in the handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of any agricultural or horticultural commodities for market or in making cheese or butter or other dairy products.

Mr. THYE. That is the language of the old act?

Mr. PEPPER. Yes; and this amendment will restore the old act to that extent.

Mr. THYE. The old act did not exclude a creamery which processed buttermilk. For that reason, I submitted an amendment to exclude a creamery which processes buttermilk.

Mr. PEPPER. We have an amendment, offered at the instance of the Senator from Vermont [Mr. AIKEN], which expressly carries the exemption to buttermilk.

Mr. THYE. Earlier in the session I introduced a bill which would place buttermilk under the same exemption as that enjoyed by any other dairy product. I wish to make certain that in the new legislation that will be covered, because this matter affects the milk-powdering plants, which normally are exempt; but the moment they begin to powder buttermilk they have not been exempt.

Mr. PEPPER. That is correct; and those plants now will have exactly the same status as other dairy-product plants now have.

Mr. O'CONOR. I should like to ask a question in respect to the sea food processing establishments. Are the provisions of the old law as to them retained?

Mr. PEPPER. In respect to sea food, the Senate bill does not change the present law. However, the House of Representatives in its bill amended the present law and applied the minimum wage provisions of the present law to the processing of sea food, but gave to the employees in that industry an overtime exemption. That is one of the matters which will come up in conference, where we shall be pleased to present the views of the Senator from Maryland.

Mr. ROBERTSON. Was that the Bates amendment?

Mr. PEPPER. I believe it was, although I am not sure. But it is in the House bill.

Mr. O'CONOR. The position of the Senator from Florida, as I understand it, is to retain, so far as possible, the present provisions of the law in regard to sea food. Is that correct?

Mr. PEPPER. That is correct.

Mr. TOBEY. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. TOBEY. In view of the comments I have just heard about the many industries which are to be exempted from the

operations of the wage-hour law, I question who will come under the law. I wonder whether a graph or chart, so simple that a high-school student can understand it, has been made, so that the people of the country may be able to know who comes under the law and who does not. I also wonder whether, when the graph is made, it will be found that the preponderance or majority of the employees come under the law or do not come under it.

Mr. PEPPER. I am glad to have the opportunity to state that about 22,600,000 workers in the United States are covered by the present law.

Mr. TOBEY. And how many workers are there?

Mr. PEPPER. Some 60,000,000.

Mr. TOBEY. About 35 percent are covered. Is that correct?

Mr. PEPPER. That is correct.

Mr. TOBEY. What about the others?

Mr. PEPPER. The others are not covered.

Mr. TOBEY. Why?

Mr. PEPPER. Because Congress in its wisdom saw fit not to do so.

Mr. TOBEY. And why did Congress see fit to act in that way? Congress made that decision because of special interests pulling and hauling and conniving, did it not?

Mr. TAFT. Mr. President, if the Senator will yield, I suggest that the Constitution prevents the Congress from prescribing in the case of wages paid to persons not engaged in interstate commerce.

Mr. TOBEY. Earlier today statements were made about the whittling away of exemptions by various Government agencies.

Mr. TAFT. Various agencies, in my opinion, extended the meaning of the term "interstate commerce" under the Constitution far beyond the field in which that term properly operates. The court decisions have resulted in doing that, too. I think it will be found that very few employees in any sense of the word can be said to be engaged in interstate commerce.

Mr. PEPPER. Mr. President, I am afraid I would regretfully differ with my distinguished friend, the Senator from Ohio. Congress has not approached the border of its authority in this field. Some of us hoped Congress would extend the coverage so far as the power of Congress reaches, by putting the words "affecting commerce" into the law. At the present time, the coverage applies to only two categories, namely, those engaged in the production of goods for commerce and those engaged in commerce. The courts—and the action on the part of the courts is the subject of amendments to the bill—have given significance to that language. The law also says, "in respect to the production of goods for commerce, and production necessary to the production of goods for commerce, or whatever is necessary to the production of goods for commerce"; so it broadens the category a little bit. The courts by interpretation have given rather full, but I think fair, significance to what the law already says. But they have made it clear in their decision that Congress did not reach anything near the border of its power in this field. Congress not only did not reach as far as we could have, but it has expressly exempted all agricultural employees under the provision I just read, affecting those engaged in handling, storing, or packing agricultural commodities within the area of production—whatever that means.

Mr. TOBEY. That is what started me.

Mr. PEPPER. Numerous other groups had been specifically exempted in the old law.

Mr. TOBEY. What I am getting at is this——

Mr. TAFT. Mr. President, will the Senator yield?

Mr. TOBEY. Just a second, and I shall be glad to yield. We have a human society made up of different elements, the capitalists, among whom I have many friends and associates, the free-enterprise fellow, the entrepreneurs, the little-business fellows, and the workers and the toilers. We have a Congress of the United States. We talk about minimum-wage legislation as a beneficent thing. Is it, or is it not? If it is good, why do we circumscribe it by letting out Tom, Dick, and Harry all along the line, because of some special influence or effort exerted on us? If we are going to raise an umbrella over human society, in fixing a minimum wage, why make it a leaky one, through which the rain will come? Why not make it something which will hold water all along the line?

I respect my friend from Ohio [Mr. TAFT]; I have a deep regard for him. He is frank and sincere in what he says. I submit to him I should like to have a minimum-wage law which will encompass all of human society, one that will result in the greatest good to the greatest number. But as I see it, we are here putting through a piece of legislation which has a lot of holes in it, with people escaping from it, and society as a whole being affected only in a partial form. Is that a fair statement, or is it not?

Mr. PEPPER. It is the view of the Senator from Florida, speaking only for himself, that the law should be extended to the limit of the congressional power. I believe it would be good for the country. I believe it would be good for the people in the higher wage groups as well as in the lower wage groups. But at the same time we are faced now with the practical problem of trying to get the minimum raised from 45 cents an hour to 75 cents an hour. Those of us who wanted to extend coverage and try to help the workers in groups that are not organized have made concessions in order to get something done. That is the reason we are opposing exemptions which will take large numbers out of the provisions of the law.

Mr. TOBEY. Mr. President, one closing shot. Let me say I wish to goodness there were available in the CONGRESSIONAL RECORD a graph which would make so plain that "he who runs may read" the proportion of the workers, and who and what they are, who come within the provision, and who are exempted. With that before us in graphic form, we might have a little more intelligible idea about this measure. But groping our way through it and relying on colloquies between Senators is not going to be very conducive to a clear understanding of the matter.

Mr. ROBERTSON. Mr. President, I want to say to my distinguished friend from New Hampshire that I cannot picture any industrialist who is the least concerned over whom we exempt and whom we do not. The labor unions have a membership of 15,000,000-plus, and I do not know of any big industrialist whose plant is not unionized, or who does not pay higher than the going union wage, as the penalty of not being unionized. But I shall speak of some who are exempt. First, the farmer. The average farm in Virginia is only 90 acres. We could not provide a minimum of 75 cents an hour for the self-employed farmer, though he would like to be assured of that much. In 1947, when farm income reached its all-time high, the average cash income of the farm group constituting 20 percent of our population was only $700. It was one-half, or less than one-half, the cash income of the nonfarmer group. Knowing that we could not provide financial or so-called social security for the farmer when we wrote this law in 1935—and I believe my distinguished colleague was with me in the House at that time—we said we could not make the farmer, who was then still in the midst of a terrific depression, pay a minimum wage when he had no chance of controlling his production, no chance of controlling his prices, and no opportunity to pass on to anyone else his increased cost of production. So, we exempted the farmer, the farm worker. Then, we exempted the initial processing of fresh fruits and vegetables. Had we not done so, it would have been passed back to the farmer in reduced prices for what he produced. But we put in the law the words "in the area of production," and we have been in a row over it ever since. The courts have made many different decisions; but finally a number of them joined with the fifth circuit in Georgia in the so-called Peanut-Cleaning case, which attempted to define what was an area of production for processing. I may say to my distinguished colleague from New Hampshire that those were the primary exemptions.

Then the sea-food industry became greatly depressed, and we applied the exemption to the first processing of sea food. The men who go down to the sea in ships in all sorts of weather work hard for a very small compensation during ordinary times. In the past 2 or 3 years sea foods have sold pretty well, but it was not a normal situation. We exempted them, because it would have been passed back to them in a lower price for their fish, oysters, lobsters, crabs, and what not. Those are the principal exemptions.

We then exempted the small telephone company, the small mutual company, with only 500 subscribers, the company having a hard time to make ends meet. They could not keep up their lines in bad weather. The lines would break down. They did not have metallic circuits. They were not required to pay the minimum wage. They would employ someone, who would perhaps be living at home, with a little switchboard at her

home, a woman who was glad to work for $50 a month, and live at home, to run the little mutual company. We exempted such companies from the provisions of the law. There were a few other similar exemptions. But the exemptions do not at all touch the real industrial life of the Nation which I feel the Senator had in mind when he expressed the fear that if we go back substantially to the present law, we shall be doing a grave injustice to a large number of workers. I do not think that is true.

We are, however, trying to protect our rural sections. The farmers have had two or three prosperous years, but they are now facing a very serious and perhaps a very bleak future. We may give them 90 percent of parity this year. We do not know what kind of parity we shall have next year, or the year after. I was talking with a good friend last Saturday, and reminded him of when he bought his feed cattle about this time last year, paying 26½ cents per pound and the fact that I had then said to him. "If you will fatten those cattle and get them to market next August, you may get 25 cents a pound. That will be the top you will get. I am no prophet, but I see a bad future for cattle." He told me last Saturday he sold the cattle at 23 cents a pound and lost money on them. Even if it is possible to put 300 pounds on a steer in a year, the man ought to get 2 or 3 cents a pound more for the finished steer than he pays for it, if he expects to make any money. If he does not, if he sells it for the same price he paid for it, he will just about break even. But by selling for less than he gave for it, he will lose money. In September last year, the same type of cattle was selling in Virginia at 32 and 33 cents a pound. The price is down 10 cents a pound. Nobody knows what cattle off grass are going to bring in October, but I guarantee the price paid for them will not be as high as the price paid for those that have been finished off with corn and cottonseed meal to go to market in August. They always bring top prices, and when the grass cattle come in, whether from the splendid blue grass in Virginia, or from the ranges of Montana and other Western States, the price goes down. We can send cattle with white marble fat on them from our blue grass, and we contend they are just as good as those finished in a corn lot in Iowa or Kansas.

When they are sold in competition with grass-fed steers from all over the States, the price goes down.

I attended a sale in Bedford early last September. I talked to some men who said they had paid as much as 40 cents a pound for feeder steers. I said, "You are certainly going to take a terrific beating when those steers go to market."

In Virginia this year there is a large apple crop, more than 8,000,000 bushels. There are some 25,000,000 bushels more in the Nation than there were last year. Last week apples were selling at $1 a bushel less in New York City than they sold for at the same time last year. One of the large growers in Virginia, who expects to harvest 750,000 bushels of apples this year, told me that only through processing a part of his apples in his own processing plant could he hope to break even, and that if he were dependent upon the market he would have to sell at $1.75 or $1.50 a bushel apples which cost him $2 a bushel to place on the market.

Mr. President, that condition can be multiplied all over the farming sections of the Nation. It is something which causes me genuine concern, because, while Virginia has been becoming largely industrialized and we like to see agriculture balanced by industry, Virginia is still predominantly an agricultural State. I frequently go into the farming sections of Virginia. I feel very close to the farmers, and I would deplore any action by the Congress which would needlessly increase the cost of production, knowing that the farmers cannot afford to assume the increased cost, nor do they have the power to pass it on to the consumer.

Mr. EASTLAND. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. EASTLAND. Does the Senator think the passage of this bill will destroy the little food processors and aid monopoly?

I invite the Senator's attention to the fact that in the city of Luray, Va., there is a peach-canning plant employing 80 girls who receive a wage of 50 cents an hour. The people who operate the plant and give the girls their employment say that if they are forced to pay 75 cents an hour they will have to close up.

Mr. ROBERTSON. I happen to know about that instance.

Mr. EASTLAND. As a result, Heinz, Del Monte, and other great companies will profit.

Mr. ROBERTSON. That is correct. I am quite familiar with our small canneries in Page County, because I represented that district for 14 years in the House of Representatives. They can peaches, string beans, and tomatoes. The average storage space is perhaps the size of this room. They serve to keep down prices of Del Monte and other big packers who otherwise would monopolize the market and who would make us pay more for our food.

I was talking with a man on the Eastern Shore recently and comparing his cost of production—he was packing tomatoes—with that of Campbell. Everyone knows about Campbell soup——

Mr. TOBEY. "Just add hot water and serve."

Mr. ROBERTSON. Yes. He told me that the workers in his plant on the Eastern Shore were colored boys and colored girls, and that practically all the workers in the Campbell plant, which is his competitor, were skilled, trained white workers. He told me that the per-unit production in the Campbell plant was approximately 40 percent more than that in his plant. He said, "How can we possibly pay the same hourly wage that Campbell pays and stay in business in competition with Campbell?" He said, "We cannot possibly do it." In that little plant I think the minimum wage is 50 cents an hour. Of course, skilled workers receive more than that. I imagine that in the Campbell plant the minimum wage is $1. That plant is unionized. My Eastern Shore constituent said, "Even with that differential, with their more efficient methods and selling technique, we have difficulty in keeping our product on the market in competition with Campbell's." It is only the price that does it.

I feel, as the Senator from Mississippi said, that if we change the present law and include small laundries, small stores, small bakeries, and bring farmers into the picture, we shall make a great mistake.

In my little town of Lexington, of what a small laundry can do I had an illustration. There is one laundry in the town. The OPA fixed the price it could charge and some other agency fixed what it had to pay. I have forgotten the details. Anyway, the laundry was losing from $2,000 to $3,000 a month in operation under the OPA prices. Laundries in Lynchburg, 50 miles to the South, and a laundry in Staunton, 36 miles to the north, were sending trucks into Lexington and getting the business because they had better machinery and had mass-production methods. Our little laundry could not compete. The OPA granted a little increase in price and a little increase to the workers, and the laundry is still operating. But if we increase the minimum wage to 75 cents an hour, that laundry will have to go out of business. It is not making any money at this time; it is largely a service for Washington and Lee and VMI. The workers will find themselves out of work, and we shall have no laundry service in the city of Lexington, but will have to get service from 50 miles to the south or 36 miles to the north.

There have been small bakeries in Lexington, but they have had to go out of business a long time ago. Bread trucks from the large cities come into the territory and the consumers pay twice what they used to have to pay.

Mr. EASTLAND. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. EASTLAND. What the Senator says with reference to laundries is true of small business in general. Small business does not have the necessary capital to buy labor-saving equipment, and when the wage scale is pushed up to the same figure as in the larger plants where production is greater, it means that small business will have to close down. This is a bill to aid monopoly and big business.

Mr. ROBERTSON. It will work out that way. The Senator from New Hampshire will recall that Mr. George Love testified in the coal hearings that his coal mines had to be worked more than 3 days in the week in order to make a profit. I asked him this question: "What investment in plant and equipment have you made per worker?" He said, "$15,000."

Where can we find a little operator who can put in $15,000 per worker in order to get the last word in mechanized operation?

Mr. TOBEY. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. TOBEY. I think this discussion is very much worth while, if only for the reason that we are sending across the country evidence of our zeal and interest, in the Senate of the United States, in the little people of the country. It is

a wonderful thing. May it stick. That is all I ask.

Mr. ROBERTSON. The Senator may remember that the great Lincoln said, "God must love the common people, for he made so many of them." There are more little people in this country than big people, more little enterprises than big enterprises. I feel that the little man and the little enterprise are the foundation of the free or competitive enterprise system, and certainly they are the foundation for the personal freedom and democratic institutions which we love and are supposed to cherish.

Mr. DOUGLAS. Mr. President, will the Senator from Virginia yield?

Mr. ROBERTSON. I yield to the Senator from Illinois.

Mr. DOUGLAS. I take it that the Senator from Virginia is aware of the fact that the small laundries, those which work merely for one locality, or for localities within the State, are exempt from the Federal law, and that therefore the illustration which the Senator has given really is not an argument against the law, because they are not included under the Federal law.

Mr. ROBERTSON. The small laundries are not under the Federal law, but there is something in the Senate bill which would not exempt them. I am speaking to that issue right now, and, of course, if we do not leave it in the bill, well and good, but I have no advance information as to the attitude of the Senate, as to whether or not the majority is going to stay with the present law on that subject, or try to bring the little laundries, the little storekeepers, the little people generally, under the law.

Is it not true, I ask the Senator, who is a member of the committee, that there was something in the Senate version of the wage-hour bill which changed the provision as to laundries?

Mr. DOUGLAS. That was the original bill introduced, but, as the distinguished Senator from Florida has said, the phrase "affecting commerce" has been deleted from the bill, and the coverage under the bill now before the Senate is no more extensive than the coverage of the existing law.

Mr. ROBERTSON. Let me ask my distinguished colleague when that phrase was deleted from the bill.

Mr. DOUGLAS. It was deleted, I think, about a month ago.

Mr. ROBERTSON. From the bill? Was it deleted from the bill that was reported from the Senate committee?

Mr. DOUGLAS. The phrase "affecting commerce" was deleted from the bill, and today we have deleted the phrase for extending control over the "area of production." Now the bill is precisely back to the present act.

Mr. ROBERTSON. That is very fine, and I am gratified, but my constituents read the first bill and wrote me about it. I have not kept up with the second bill or the other amendments. I wish to commend my distinguished colleague from Illinois for taking that wise action, and I hope further action of the Senate will be in that direction, plus a reduction of the 75-cent minimum to 65 cents. I might as well cover the whole subject while I am at it, and that is the last issue I plan to discuss.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield to the Senator from Florida.

Mr. PEPPER. I merely wish to make the observation, if I may, that in the original bill, to which the able Senator has adverted, the object was not to bring in little people; the retailer and service establishment were brought in only in case they did half a million dollars' worth of business a year. So it was not a little grocery or corner drugstore that was brought in.

Mr. HOLLAND. Mr. President, will the Senator from Virginia yield?

Mr. ROBERTSON. I yield to the junior Senator from Florida.

Mr. HOLLAND. I merely wanted to say, in connection with the discussion of the laundry exemption just indulged in by the junior Senator from Illinois, that, after the rather long discussion which took place on the floor of the Senate, I think he is mistaken in his conclusion. The laundry which does business solely in the local community remains exempted under the present situation, because the rule applied to laundries, just as to retailers, is on the basis of the purpose for which the work is done, and for what kind of clientele. For instance, a laundry a large part of whose business is for hotels, or for the city hall, or the county courthouse, or for other types of business, doctors' offices, and the like, can and does lose the exemption, so that the question does not at all have to do, under the present situation, with seeking to protect a group that is already fully protected, but, on the contrary, is an effort to protect the group that was intended to be protected by the original bill, and, as shown very clearly by all the remarks of the original proponents, to have been intended to be protected, but from whom the protection has been withdrawn under the regulations and under the interpretations.

Mr. ROBERTSON. I assumed the Holland amendment was necessary. If I am shown it is not necessary, of course we do not have to consider it, but otherwise I shall be glad to support the Holland amendment. I have proceeded on the assumption that the amendment is necessary.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield to the Senator from Florida.

Mr. PEPPER. There has been a great deal of confusion about the so-called laundry and retail establishment, and the confusion has not been eliminated. I wish to make it doubly clear, because I do not want to add to the confusion or make any conscious contribution to it—and I cannot make it too clear—that the position the committee has taken is not to bring intrastate commerce under the coverage of the act, but to prevent an enterprise from getting the exemption of a retailer, and being able to sell 50 percent of its goods in interstate commerce and not have a worker covered. That is the issue. Senators do not seem to realize that what they are asking is the privilege of getting someone classified as a retailer, or as a service establishment, and then have him send half his goods, if he chooses to do so, across State lines, and not have the workers engaged in the interstate commerce covered. If his activities are restricted to the State, very well, but the amendment of my distinguished colleague starts off in the first paragraph by referring to "50 percent"—referring to a case where an establishment does not do more than 50 percent of its business in a State. Where does the other 50 percent go?

So, when we come to a full discussion of this matter, there are two sides to it. I do not want Senators to foreclose their minds by thinking that the committee is trying to apply or has applied the provision to the little service establishment or the little merchant and others in the same class.

Mr. ROBERTSON. Mr. President, my distinguished colleague from Florida referred to the time when we will come to a full discussion. I have a speech on this subject written in my office, and I had planned to deliver that speech, but when we were told that if we would be brief in our comments, and work hard, and perhaps work tonight and perhaps work tomorrow, we might get out of here Thursday and have from Thursday until next Wednesday, I decided to leave my speech in my office, and make a short comment in lieu of a full discussion. But even in a short comment I cannot omit some reference to the 75-cent minimum for those who are now covered. I am not talking about bringing other people in, but referring to those who are now covered. I honestly feel that it would be a mistake to make the minimum 75 cents from a number of standpoints.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield to the junior Senator from Florida.

Mr. HOLLAND. There is no thought at all of bringing about by the so-called Holland amendment any condition under which the present application of the present law with reference to interstate business is changed in the slightest jot or title. The present law reads, referring to exemption, "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce." Instead of leaving the language of the law to be interpreted solely upon the question of the interpretation of "greater part," our amendment proposes to state clearly that whenever more than 50 percent of the business is in intrastate commerce the condition is met. I wish to say at this stage, because I would not have any misunderstanding whatever get abroad on this subject, that under my amendment there is not the slightest change from the present law insofar as bringing in any workers engaged in interstate commerce, meaning commerce between the various States, is concerned.

Mr. PEPPER. Mr. President, will the Senator from Virginia yield?

Mr. ROBERTSON. I yield to the senior Senator from Florida.

Mr. PEPPER. Let me say, in response to my distinguished colleague's observation, that what he does is to change the definition of who is a retailer. That is the significant matter. If one is a retailer, then he can ship half of his goods in interstate commerce and his employees are not covered. It is only, however, when the statute makes one a retailer that he can do that. So, when my distinguished colleague enlarges the category of retailers he enlarges the right to ship in interstate commerce without the workers engaged in the interstate commerce being subject to a Federal statute which regulates interstate commerce. That is the difference between us.

Mr. ROBERTSON. Mr. President, I wish to conclude very briefly on the subject of the 75 cents an hour minimum figure in the House bill. Some years ago a relatively small carpet plant was located in my home county, about 15 miles from Lexington. At that time farm hands were making from 20 cents to 25 cents an hour, and most of the men that went to work in that plant had previously been farm workers; and women who worked there had no previous employment at all.

Recently the manager of that plant told me that the minimum wage paid in that plant was $1.10 an hour. I rejoice in that. Time after time the CIO has endeavored to unionize that plant, but never with any success.

This plant was subject to the wage-and-hour law. Its officials have discussed the wage question with me. I said to them, "Always raise wages to your employees before the time comes when the law will force you to increase the wages." They did so. They never waited for the 35 to 40 cents an hour law to become effective. They were always ahead of the law in respect to increasing wages.

In addition to that they provided hospitalization for their employees. They keep two automobiles in readiness for use in case any employee becomes sick, or there should be trouble in the family. In such event a driver is available and the employee sent home.

The employees are taken to and from their work in busses. Every employee lives at home, has a garden and a cow. The employees are happy and contented because they are treated with friendly consideration. The minimum wage paid the employees is $1.10 an hour.

The plant received four E awards for making duck and other materials during the war. That plant produced over and above the call of duty during the war, and was recognized and rewarded by receiving the E awards.

But, Mr. President, I want to say that if by law we attempt to force some little operator, who does not have the productive capacity nor the market, to pay his employees a minimum of 75 cents an hour, we are going to work an injustice against certain types of workers who cannot, in such a plant, be paid 75 cents an hour, and they will have no employment. That is point No. 1.

Point No. 2 is that I do not think we can stabilize a given standard of living simply by passing a law. I think they have gone pretty far in Great Britain along that line, and it has not worked, and it will not work in this country.

Point No. 3 is that this 75-cents-an-hour minimum wage is going to operate primarily against the farm products—against what people eat and what they wear. If we do make the program work, we are simply going to increase the cost of living to those who are a little above the 75-cents-an-hour minimum-wage level, so their wages will not go as far as they have previously. The person who cannot produce enough to earn 75 cents an hour is going to be infinitely worse off.

Mr. President, these appear to be very flush times, except when we look at the budget situation. They are not so flush for the Treasury Department. But from the standpoint of the national income, the money we are spending, and the style in which we are living it might seem that these are pretty flush times. Certainly in the future there is going to be a period of reckoning. We cannot support this economy by borrowed money indefinitely. Sooner or later we have got to get down to rock bottom and balance the budget. We must face up to the stern realities that we cannot have more than we actually produce.

In view of those uncertainties why would it not be the part of wisdom to proceed with this problem—and certainly all of us sympathize with those who now do not receive as much as 75 cents an hour—to provide at the start for a minimum, let us say, of 65 cents an hour, and see whether that works. If that does not work, we will all certainly be glad we did not make it 75 cents an hour. If it does work, and some of us would be greatly surprised to see our economy stabilized on the basis of a national income in excess of $200,000,000,000 a year, but let us suppose it does, that will be time enough to say, "Well, for the least skilled worker we will stabilize you at 75 cents an hour, and if you cannot get jobs paying that wage, we still have a social-security system or some other system that will take care of you without working." But Senators know we will never have any system that will take care of people without working. And we have no assurance now that all small enterprises can survive and pay a minimum wage of 75 cents an hour.

I appeal to my colleagues to join with us in the South, where the increase is going to be felt immediately, to set the figure for the time being at 65 cents an hour, and see how that works.

ADDRESS BY THE PRESIDENT AT THE AMERICAN LEGION CONVENTION, AUGUST 29, 1949

Mr. KEM. Mr. President, at the American Legion convention in Philadelphia yesterday, President Truman addressed himself to what he called, "Our International Economic Policy." He laid down certain principles which he said should govern our discussions with representatives of the United Kingdom when they come to Washington to talk about further aid to Britain. I have no doubt that one statement made by Mr. Truman has attracted the attention of many Members of the Senate and of the American people generally. It is this—and I quote from President Truman's speech:

> We recognize that each nation has its own political problems and that its uses different political labels and different slogans from those we use at home. In the same way, nations have different business practices and different governmental devices for achieving the same economic ends.

This raises the question: Are the present government of Great Britain and the present administration in the United States trying to achieve the same economic ends?

Mr. President, the Socialist government of Great Britain has plainly and unmistakably told us what are its economic ends. The present government of Great Britain is committed to the principles of Karl Marx. The first of these principles is the abolition of private property and the government ownership of the means of production. This is not merely as Mr. Truman seems to think, a political label or a mere slogan. It is a serious, a deathly serious, policy of governmental action. It represents an attempt to destroy the institution of private property in Great Britain. Working on this policy the present Government of Great Britain has already brought about the nationalization of one-fifth of the total economy of that country. Plans have been announced and are being rapidly pushed to take over much or all of the remainder.

Does this mean that the President has committed himself to work toward the same economic end as Socialist Great Britain? Is Mr. Truman's statement a trial balloon? The American people are entitled to know exactly where he stands, and what he means.

This program carried out in the United States would mean the destruction of an economic system that has given our people the highest standard of living the world has ever seen. Our economic system is the envy of the people of all the rest of the world. Are we prepared to junk it, and to take in its place the economic plans and objectives of the present Socialist leaders of Great Britain?

If so, our British friends can bring with them to Washington a complete blueprint. It is ready at hand.

British farmers, for example, are regulated and directed from sunup to sundown. A British farmer may neither kill a pig nor give a dozen eggs to a neighbor without first applying for and acquiring a permit from the proper authorities. The Minister of Agriculture can force a farmer off his own land if he does not plow, sow, or reap according to plan. Is this what Mr. Truman is proposing for the American farmer?

A British carpenter cannot give up his job without permission. If he does so, he goes to prison for 3 months, or pays a fine of $300. Is this what Mr. Truman proposes for the American workers?

These are but two examples of what happens to the rights and liberties of a free people under the economic system now prevailing in England, and for which Mr. Truman appears to have expressed on our behalf some degree, at least, of like-mindedness.

But the question remains, If this economic end is so sound and good, why are

the British coming to Washington? Why do we have the gold rush of 1949?

The most fundamental question in what the President calls "our international economic policy" is whether the money of the American people, earned under a system of free enterprise and personal initiative, shall be used in further experiments in British socialism.

We all agree with Mr. Truman when he says that we are not proposing to interfere in one another's internal politics. But, Mr. President, the representatives of the American people have the responsibility of saying how the money of the American people, taken from them in taxes, shall be spent. We are told on highest authority that the money of the American people is now being used as a slush fund to keep the British Socialist Party in power. It is to this problem that we earnestly hope our representatives at the Washington Conference will devote their best thought and earnest attention.

TRADE AGREEMENTS

Mr. MALONE. Mr. President, will the Senator yield?

Mr. KEM. I am glad to yield to the Senator from Nevada.

Mr. MALONE. Mr. President, I should like to ask the distinguished Senator from Missouri if he has in mind some of the suggestions which have been put forth in the press lately, to the effect that the British and their attendants coming to the September conference, might propose, for example, a combination of the dollar and the pound, a sort of a "dolpound," an economic combination or interdependence of the sterling-bloc area and the dollar area.

Mr. KEM. Several proposals have been suggested, including the one to which the able Senator from Nevada has referred. Another is that Marshall-plan funds be used for the purpose of purchasing Canadian wheat, and in that way building up the dollar reserves in England. But I will say to the Senator from Nevada that so far as I have seen, all the suggestions advanced have one thing in common. They contemplate a means or method of tapping the American Treasury, which the British have done so often, so successfully, and so prolifically in the past.

Mr. MALONE. Mr. President, will the Senator further yield?

Mr. KEM. I am glad to yield.

Mr. MALONE. When I visited Toronto, Canada, in 1947 I chided the Canadians in an address to the Mining Association of Canada about waiting for the Marshall plan money to go to England to be used by that nation to buy wheat for cash in Canada.

Do I correctly understand the Senator to say that all these plans, such, for example, as the 1934 Trade Agreements Act, under which the State Department has established a special selective free-trade policy to divide the markets with the nations of the world, all depend upon the United States Treasury, and all amount to a division of the markets, which is the source of our income in this country?

Mr. KEM. From my point of view, that is true. We see the British making barter agreements with Argentina, with the purpose, intent, and result of excluding American enterprise from the markets of the Argentine; and at the same time we see the British suggesting that we should lower our tariffs so that they can come into the markets of the United States. There twin policies are policies in which the American people are bound to lose. It is a case of "heads I win, tails you lose."

Mr. MALONE. Mr. President, will the Senator further yield?

Mr. KEM. I am glad to yield.

Mr. MALONE. Under the method of making these agreements pursuant to the 1934 Trade Agreements Act, when they enter into an agreement with us they immediately put into effect quotas, embargoes, manipulation of their currencies for trade advantage, thus nullifying their part of this agreement so that only our country is affected by the trade agreement. But when we make an agreement with any foreign nation the multilateral theory prevails and any advantage given that nation through lowering our import fees or tariffs immediately becomes available to all the other nations of the world, and we keep our part of the agreement—so it is a one-way trade. Is that true?

Mr. KEM. I think that is true.

Mr. MALONE. I should like to ask the Senator from Missouri who benefits from such a system when this nation with which the trade is made immediately nullifies it—and through the multilateral system all any nation has to do is to keep quiet, and finally we make enough trades on practically every commodity so that it will get all of the benefits without even making any so-called trades. Is that true under present conditions?

Mr. KEM. That is the way it works according to many observers. It is a very interesting thing that when the British loan of $3,750,000,000 was being proposed in 1946, the proponents of the loan urged that that was a way to prevent the execution of bilateral barter agreements between Great Britain and other countries of the world. We went along and accepted the proposal. We loaned or gave Great Britain the enormous sum of $3,750,000,000. We incorporated in the agreement, which was ratified by Congress, a provision to the effect that Great Britain should not make any more barter agreements. But we now learn that Great Britain is continuing to make them. It seems that the provisions of the British loan agreement have been waived either expressly or by implication by the executive department of the Government. I raise this point: If the agreement required the authority of Congress to make, should not Congress have the prerogative and right of passing upon any proposals to waive or modify its provisions?

Mr. MALONE. Mr. President, will the Senator further yield?

Mr. KEM. I yield.

Mr. MALONE. I was about to ask that very question of the Senator from Missouri. Was there a provision in the loan agreement, or in the approval by Congress of the loan, whereby the State Department, or the executive department of the Government, could modify any part of it without further congressional action?

Mr. KEM. I understand that the position of the executive department is that the agreement was made by the executive department, and that it was then ratified by Congress, but that it was primarily an agreement of the executive department, and remained so. The position of the executive department is that representatives of that department have the right now to change its provisions if they see fit to do so.

Mr. MALONE. According to that line of reasoning, if an attorney proposes an agreement between two parties, after it is duly signed and notarized the attorney having written it, may modify the agreement upon the request of either party to the agreement without the consent of the second party.

Mr. KEM. The contention as I understand is, the agreement was the agreement of the executive department of the Government in the first place, that the ratification by Congress was merely a confirmation of what the executive department had done, and that the executive department is now clothed with the authority to change it if it wishes to do so.

I will say to the Senator from Nevada that in my judgment good faith demands that the provisions of the agreement be carried out until they are modified or changed by the elected representatives of the American people sitting in the Congress of the United States.

Mr. MALONE. I should like to ask the Senator a further question on that point. If approval by Congress carried the further privilege of modifying the agreement, and if the executive department has the authority to modify an agreement at any time, why not simply give the executive department blanket permission to make any agreement it wishes to make without consulting Congress at all?

Mr. KEM. Of course, the answer is that if the executive department had come to Congress for a blank check, they would not have gotten what they asked. And so perhaps they have succeeded in doing indirectly what they would have been unable to accomplish directly.

Mr. MALONE. Yes.

Mr. President, will the Senator yield further?

Mr. KEM. I am glad to yield.

Mr. MALONE. There has been clear indication in the newspapers, that over a period of several years, the European governments have had a way of using their effective psychology on the United States by shocking us with their outlandish proposals first and then putting over a slightly modified form of an agreement containing substantially what they wanted in the first place.

For example, we have the austerity of Britain and other European nations built up in the news stories to the highest point at the present time, and now their representatives are coming to the United States in an attempt to get further funds and a further division of our markets with the sterling bloc countries.

Does not the statement the President made at the American Legion convention

and do not the statements he has made elsewhere and the announcements the State Department has made support the theory that we are going to continue to even a greater extent opening our markets to the countries of the sterling bloc area, and that also perhaps we may act in accordance with the suggestion made by Mr. Bevin in 1947, and now renewed in the newspapers, namely, that we should purchase the currencies of those nations at a rate slightly reduced from the present official rate, but not down to the actual value, and that we should make those purchases in gold, and thus give those nations our Fort Knox gold? Has not that suggestion definitely been made?

Mr. KEM. I think it has. I think all have directly or indirectly the same objective in mind, namely, to tap and to tap again the Treasury of the United States and the resources of the American people.

Mr. MALONE. In other words, all of it leads to a direct cost and drain upon the Treasury of the United States or to a division of our markets, which is the basis of our national income.

Mr. KEM. Yes; and such a division is a division of the source of our wealth, which is even more important in the long run than a division of our Treasury funds.

Mr. MALONE. Yes.

Following that, let me say that in debate some weeks ago, we brought out the fact that some 30 different values are given to the pound sterling, depending upon the particular area or type of trade in which it is involved at the moment. In other words, the official rate for the pound sterling is $4.03, whereas the rate on the market—whether it be called free market, black market, brown market, tan market, or whatever one may wish to call it—is about $2.10, and that is the rate that smart traders are paying today. The pound sterling can be purchased for approximately $2.10 on the open market. The Senator is familiar with that matter, I suppose.

Mr. KEM. Yes.

Mr. MALONE. Suggestion has been made, perhaps as a feeler, that the Secretary of the Treasury would insist upon a certain devaluation of the pound sterling to $3.25 or perhaps $3 before this Nation would invest its money. If the United States bought the pound sterling at that price, say $3, in exchange for gold, that would still be at least 90 cents above the market price for the pound sterling. Such a step would logically lead to the next step—only hinted at by the news despatches, that a year or two after the United States pays gold for those foreign currencies, the foreign countries thus obtaining our gold will raise the price of such gold and sell it back to us at a profit. We would of course still have the worthless paper.

Mr. KEM. I think that is being proposed now, namely, that the value of the dollar be reduced—in other words, that the price at which we buy gold from the British and other nationals shall be raised. Uncle either gets less or pays more.

Mr. MALONE. For example, if the Senator will yield for a further question—and I think our minds meet on this matter—while some of our Government officials write books or documents such as the white paper on China, and various other publications to obscure the real objective, nevertheless the objective is not changed. The objective is to establish a direct channel to the Treasury of the United States, which holds our wealth in terms of money, or to divide our markets, which is the source of our wealth. Is not that true?

Mr. KEM. I think undoubtedly it is true.

Mr. MALONE. I thank the Senator.

Mr. KEM. Mr. President, I wish to close by saying that I think the situation shows beyond question that the representatives of the United States at the forthcoming conference with the able and experienced British negotiators should be on guard to protect the interests of the American people. I express the hope that our representatives will be on their guard in the spirit of the embattled farmers who stood at Concord Bridge and fired the shot heard 'round the world.

COMMITMENTS WITHOUT THE INTERVENTION OF CONGRESS

Mr. WHERRY. Mr. President, will the Senator yield for a question?

Mr. KEM. I am glad to yield.

Mr. WHERRY. In view of the statement made by the President of the United States to the effect that consideration would be given to Britain, regardless of her internal affairs or politics; and in view of the further fact that the participants at the conference are now going to hold further discussions in an attempt to arrive at some economic union, nevertheless does not the Senator from Missouri feel that regardless of whatever conclusions might be reached, no moral or legal commitments should be entered into without having the Congress and the American people know what those commitments and agreements are?

Mr. KEM. I agree absolutely. I think we have before us the pertinent example of what has occurred in the case of the British loan. Certain provisions were incorporated in the agreement ratified by Congress, but now the executive branch of our Government claims the right to modify those provisions at will. Of course, we also have our poignant recollection of what happened at Yalta. Our representatives at Yalta upon their return home, said they had made no commitments in certain fields. Later it developed that certain epoch-making and world-shaking commitments were in point of fact made at that time. Now these commitments at Yalta are considered by many at home and abroad to be moral obligations of the American people.

Mr. MALONE. Yes. Let me ask the distinguished Senator if in reality he is serving notice, in his own interest and in behalf of the people he represents, that the representatives of foreign countries who are participating in these negotiations, as well as the representatives of the United States who are participating there, should take notice that no moral commitments bypassing the Congress of the United States shall be made.

Mr. KEM. Mr. President, I wish to associate myself with the very eloquent statement made in the Senate a few days ago by the minority leader, the distinguished Senator from Nebraska [Mr. WHERRY], when he served notice on the British representatives. At that time I said I thought that was a patriotic statement worthy of an American statesman. I associated myself with it then, and I am glad to have opportunity to associate myself with it again today.

Mr. MALONE. Mr. President, will the Senator yield?

Mr. KEM. I am glad to yield.

Mr. MALONE. Has not Congress already abrogated some of its very important powers? For example the Constitution of the United States gives Congress the authority to fix tariffs and import fees on goods and other products imported from foreign nations. Has not the Congress already abrogated that authority and placed it directly in the hands of the State Department, without any restriction whatever, under the 1934 Trade Agreements Act; and cannot the State Department, without any suggestion from Congress or any approval by Congress, make a so-called trade treaty which amounts to a real treaty and becomes the supreme law of the land? Has not the State Department already reduced the tariff and the import fees, below the differential of cost of production due principally to the difference between the standards of living of these countries? Does Congress now have any right whatever to question or to adjust such tariffs or import fees in any manner at all?

Mr. KEM. Mr. President, I yield to my distinguished friend, the Senator from Nevada in the field of knowledge in the Reciprocal Trade Agreements Act and its operation. It would be carrying coals to Newcastle for me to undertake to add to his information in that important field.

Mr. MALONE. Mr. President, if the Senator will yield further, I should like to say that the "reciprocal-trade" phrase has been invented as a means of selling free trade to the American people. That phrase does not occur in the 1934 act in any way whatsoever. It is impossible to make effective trade agreements with a country that manipulates its trade for its own benefit and advantage or which engages in bloc buying and bloc selling for its own advantage.

Also it is impossible to have an effective trade agreement with a country which makes bilateral trade agreements in direct conflict with the principle agreed upon. The South American bilateral trade agreement is an example and tends to cut off our normal trade with that country. In other words, the result has been something entirely different from what Congress had in mind, and the result is not any benefit whatever to us in the way of trade.

Mr. KEM. I thank the Senator for his interesting contribution to this discussion.

MINIMUM WAGE STANDARD

The Senate resumed the consideration of the bill (S. 653) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

Mr. PEPPER. Mr. President, I call up the next amendment on the desk, which is a committee amendment.

The PRESIDING OFFICER. The Chair will state there are two or three committee amendments. The clerk will state the next amendment.

The CHIEF CLERK. On page 40, at the end of line 12, it is proposed to insert the following:

By inserting before the semicolon following the word "agriculture" in clause (6) thereof a comma and the following: "or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, and which are used exclusively for supply and storing of water for agricultural purposes;".

Mr. PEPPER. Mr. President, the Senator from Louisiana [Mr. ELLENDER] has a modification of the amendment which he wishes to offer. I yield to the Senator from Louisiana.

Mr. ELLENDER. Mr. President, I propose to modify the amendment, on line 6, after the comma, by adding "or operated on a share-crop basis,".

Mr. PEPPER. Mr. President, I ask that the amendment be modified as suggested.

The PRESIDING OFFICER. Without objection, the amendment proposed by the Senator from Florida, on behalf of the Committee on Labor and Public Welfare, will be modified as suggested by the Senator from Louisiana. The question is on agreeing to the amendment proposed by the Senator from Florida, on behalf of the committee, as modified.

The amendment, as modified, was agreed to.

Mr. PEPPER. Mr. President, I call up the next amendment, which is my amendment B, dated August 29, which I offer for myself and on behalf of the Committee on Labor and Public Welfare.

The PRESIDING OFFICER. The clerk will state the amendment.

The CHIEF CLERK. On page 41, after line 17, it is proposed to insert the following:

Section 13 of such act is amended by adding at the end thereof the following new subsection:

"(e) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer."

Mr. PEPPER. Mr. President, that is the amendment proposed by the Senator from Ohio, simply making it clear that newsboys delivering papers to the consumer are not covered.

The PRESIDING OFFICER. Without objection, the amendment offered by the Senator from Florida for himself and on behalf of the Committee on Labor and Public Welfare, is agreed to.

Mr. PEPPER. Mr. President, those are the only amendments offered by the committee which I care to call up at the present time.

The PRESIDING OFFICER. The Chair informs the Senator from Florida there is one committee amendment which has been passed over.

Mr. PEPPER. I know there is one. I should like it to go over temporarily. We shall consider it later. It is the one restoring the area of production to what it is in the present law.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. PEPPER. I yield to the Senator from Minnesota.

Mr. HUMPHREY. Mr. President, I should like to send to the desk an amendment which I intend to propose and shall call up at a later time. I ask that it be printed.

The PRESIDING OFFICER. The amendment will be received, printed, and lie on the table.

Mr. HUMPHREY. Mr. President, in view of the fact, as has been stated in the Senate, that there is a possibility we might be able to draw these deliberations and debates to a timely close, I had prepared certain material on one section of Senate bill 653, section 7, and on section 16 of the Fair Labor Standards Act. I therefore offer at this time, as a statement, material pertaining to the right of the employees to collect unpaid wages due and to sue for the payment of back wages, as an explanation of the amendment which has been offered by the Senate Committee on Labor and Public Welfare. I ask that it be included in the body of the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE RIGHT TO COLLECT UNPAID WAGES DUE AND TO SUE FOR THE PAYMENT OF BACK WAGES

Mr. President, I desire to speak in support of S. 653, a bill to amend the Fair Labor Standards Act of 1938. This bill comes to the floor with the unanimous support of the Committee on Labor and Public Welfare. It is bipartisan and noncontroversial, and I hope it will remain that way. I must admit that I had hoped to see the benefits of this act extended to many employees who do not now enjoy such protection. I believe many of my fellow Senators share my feelings on this subject. However, it was believed best at this time to attempt only the most needed and less controversial improvements in the act. I know that many Senators will express themselves in behalf of the proposed 75-cent minimum wage. I wish to address myself to a provision of the bill which is designed to remedy a serious defect in the enforcement machinery of the act. This provision is one which is contained in other Federal laws dealing with wage payments and in most of the State wage laws. Without this provision, the act is not and cannot be the effective piece of legislation it was intended to be. A good law may be rendered worthless by failure to provide adequate machinery for enforcement.

More than a decade ago, Congress passed the Fair Labor Standards Act, a good law, benefiting the workers, the employers, and the country as a whole. Its purpose is to safeguard to the lowest paid workingmen at least a minimum income for health and decency, to protect fair-minded employers who wished to pay their workers living wages against unfair competition from less scrupulous employers, to raise living standards and improve the general prosperity and welfare in the country. To fully attain these beneficial aims it is necessary that the provisions of this act apply fairly and equally to all employees and employers covered by it. With this intent Congress authorized the Administrator to bring civil suits in the courts to restrain violations, and, in the case of willful violations, to institute criminal action. The Congress also provided that employees may bring suits to recover unpaid minimum wages and unpaid overtime compensation, and an additional equal amount as liquidated damages, against employers who violate the wage and overtime provisions of the act.

It is not enough to establish standards unless we provide at the same time that the standards will be fully effective. It, no doubt, appeared to Congress, at the time, that the penalties which they had provided would secure compliance with the act. More than a decade of experience in the administration of this act, however, has revealed a serious flaw in this enforcement machinery. For, after all, the purposes of the act can only be achieved if all the employers pay and all the employees actually receive the minimum wages and overtime compensation required by the act. Equitable and fair enforcement requires, not simply that employers be enjoined from violating the act in the future, or that they be fined or jailed for willful violations in the past. Equitable enforcement requires that each and every employer be required to pay all of his covered employees the required minimum wage and overtime compensation, and that none of them be able to evade this obligation. A large proportion of cases where violations are found are suitable neither for civil litigation, usually because the violations have ceased, nor for criminal prosecution, because the element of willfulness was not present or could not be proved. But whether the case is brought to court or not, the employees have not received the wages which were legally due them.

In its inspection activities each year, the Wage and Hour and Public Contracts Divisions have discovered many millions of dollars of unpaid minimum-wage and overtime compensation due employees under the act. The Divisions have followed the policy in violation cases not warranting legal action of requesting employers to pay employees back wages unlawfully withheld under the act. When informed that they have been in violation, some employers voluntarily agree to make restitution to their employees, but many others refuse to pay up the back wages due their employees. Since the Administrator does not have adequate authority to bring action for the recovery of the money due the employees under the act, the great preponderance of back wages found due does not get paid. During the last 4 years, these sums amounted to over $32,000,000.

At the present time the only method of enforcing the payment of wages which the law requires is through employee suits under section 16 (b) of the act. Employees, singly, or in a group, may bring civil action under this section of the statute to recover directly the unpaid wages due them, in which case they are entitled to an additional amount as liquidated damages. But that it is not sufficient just to give the employees the right to sue is indicated by the fact that no actions have been brought with regard to the overwhelming bulk of the wages unlawfully withheld. For example, between October 1938 and June 1945, a period of over 6½ years, only a few thousand employee suits were instituted. In this same time over 100,000 complaints were lodged with the Divisions. Except in instances where employee suits have the backing of a strong union, employees are reluctant to sue their current employers. They fear reprisals: discrimination in job assignments, denial of promotions, insecurity of job tenure. The 2-year statute of limitations generally prevents their suing a former employer. And thus wages legally due are forever lost.

Of the more than 20,000,000 employees covered by the act there are approximately 9,000,000 who do not belong to any labor union. These unorganized workers are the lowest paid, the ones most in need of the benefits of the act. They are the ones most

likely to be victimized by noncomplying employers. They are also the ones who are least likely to sue. They lack cohesion necessary for employees to sue in a group, and are not likely as individuals to be able to stand the expense and risk involved in a law suit. They are also much less apt to be informed of their rights under the act, and of the limitations on the period in which they can sue to recover, than are members of labor unions. Yet the protection afforded by the act to the low-paid unorganized workers is a safeguard to the whole structure of fair labor standards in the country. The undermining of the standards of these workers threatens the standards of the workers throughout industry. It also is a threat to the enforcement of the act.

The Congress acted with commendable dispatch to bar employees from bringing suit to recover back wages which it considered was merely a windfall and not properly due them. I refer to congressional action to negate the Supreme Court ruling on the so-called overtime-on-overtime problem. The employees involved in that situation were members of strong unions, received high hourly wages and enjoyed excellent overtime provisions in their union agreements. What about the unorganized workers? They are the lowest paid, very often are unaware of their rights and are understandably afraid to take any action which they think might jeopardize their jobs. The Congress should, in simple fairness, see to it that these employees receive what we in Congress declare as a matter of law should be paid.

There is no question of punishing employers. The only question is one of assurance that wages legally due shall be paid. The only way to make sure that employees receive the wages due them is to give authority to the administrative agency to supervise payment of the back wages, and, if necessary, to sue for payment of back wages due. An employer must pay debts due creditors. Why then should he be permitted to disregard wages due his employees? He will not be required to pay interest for the money he withheld; he is not subject to punitive damages or to a fine. Under this provision he is simply required to pay what he rightfully should have paid sometime in the past. The law-abiding employer should not be at a competitive disadvantage with respect to those employers who will evade the law if their odds for successfully doing so are great enough.

The Congress acted so that employers whom the Congress considered maintained good labor standards should not suffer loss because of unanticipated claims based on technicalities of the act. Similarly, the Congress should provide that the other kind of employer is not permitted to evade his responsibility under the law because of a defect in the machinery of enforcement.

I am certain that the Congress did not anticipate the possibility that many hundreds of employees would never receive wages found by the Divisions to be due them under the act. It seems to me that it should be a matter of justice that employees should receive what is owed them. The fact is that an increasingly large proportion of unpaid minimum-wage and overtime compensation is not being received by the employees involved. The reports of the Wage and Hour and Public Contracts Divisions show that in the fiscal year 1945, 86 percent of the establishments in violation of minimum-wage or overtime-pay requirements made restitution of unpaid wages; in the fiscal year 1946, 81 percent; in 1947, 76 percent; in 1948, 63 percent; and for fiscal year 1949, only 62 percent. Even more revealing is the decreasing amount of restitution being made. Of the back wages owed in the fiscal year 1946, 62 percent was paid; in 1947, 48 percent; in 1948, 40 percent; and in 1949, back wages paid had dropped to only 35 percent of the amount found due, and the proportion being paid is going down daily. Clearly the trend appears to be that an increasing percentage of employers in violation are refusing to pay to employees the back wages which the law says belongs to them. More and more employers are refusing to make restitution on the ground that many other employers are not doing so. They also point out that even if they made restitution, they would still be subject to the possibility of suits under section 16 (b) of the act for an additional amount as liquidated damages.

This is a most unfortunate situation, and most unfair to all concerned—employees and employers alike. It is shameful that large numbers of the lowest-paid workers should be cheated out of millions of dollars legally due them. These are the very workers the act seeks to protect. By failing to ensure their rights to their wages, the act becomes self-defeating. Just as H. R. 858 and the Portal Act define and set limits on the obligations of employers under this law, it is also necessary to protect employees by safeguarding the minimum-wage standards established by the act. And in the case of these low-wage workers, the loss of this money means the difference between a decent subsistence and actual privation.

Not only the workers, but many employers too, are penalized by the failure to insure uniform restitution of back wages due. For employers who do pay are placed at a competitive disadvantage with respect to those who do not. Some employers who have unknowingly violated the minimum wage or overtime provisions are distressed at having inadvertently deprived their employees of earned wages, and eager to make restitution. On the other hand, some employers will refuse to make such restitution if they have reason to believe they can get away with it. These recalcitrant employers make it difficult for the well-meaning employers who have to compete with them to treat their employees as fairly and equitably as they would desire. Moreover, those who do not make restitution also gain a competitive advantage over the employers who are complying with the act. It is manifestly unfair to employers who desire to comply with the act to allow violating employers to gain a competitive advantage from failure to maintain minimum labor standards. It is unjust that the conscientious and complying employer should suffer a severe burden in comparison with noncomplying competitors.

Moreover, the payment of back wages is essential if compliance with the act is to be assured. All laws which the Congress enacts should be enforced equitably and effectively. Surely this is not attained when some employers who have violated the act pay up the back wages due their employees while others do not do so. If some employers are allowed to profit from violations others are tempted to ignore the act in the hope that they too can get away with it for a long time before they are caught. This encourages violation of the act.

The proposal now before us corrects this flaw in the original act. This section authorizes the administrator, upon making an inspection and finding that back wages are due, to supervise the payment of the wages due to employees affected. If an employer refuses to pay, the Administrator is authorized to institute court action, if necessary, to collect such back wages. The section also provides that once an employer has paid back the wages due, he would be completely protected from the possibility of employee suit on this violation for an additional amount as liquidated damages.

This type of action would by no means be an innovation. It is provided for in many State wage laws; in fact, in nearly all of the State minimum-wage laws passed since 1933. Among the States in which the authorities empowered to administer the minimum-wage laws are given the right to sue and collect back wages are: California, Connecticut, Hawaii, Illinois, Kentucky, Louisiana, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, and Wisconsin. In most States with minimum-wage laws it is taken for granted that proper enforcement of such laws requires that the enforcement agency be authorized to collect back wages owing to underpaid employees as part of its regular duties.

The proposed amendment would actually not change the present administrative procedure to any appreciable extent. Granting the Administrator the right to sue for back wages due does not, of course, mean that he would have to go to court in case of violation. This right would be used only as a last resort. It would result in little, if any, increase in the number of cases in which legal action is found necessary. Administrative practice would continue exactly as at the present time. Inspectors would continue to visit establishments of employers subject to the provisions of the act to ascertain whether the establishments were in compliance, advise employers of their obligations, and point out corrective measures. Where violations are found, they are commonly technical in nature, or due to inadvertence or to misunderstanding of the law. The inspector will inform the employer of the approximate amount of money due in restitution to the employees, obtain his consent to payment in full, and supervise the payment. Only in those few cases where the employer refused to make restitution of wages clearly owed would the Administrator need to resort to court action. The cases would be few indeed if employers knew that the Administrator had the authority to institute such action.

At the present time the Administrator can only plead for restitution by a violating employer. In the early years after the act became effective a great many employers willingly consented to pay the restitution to their employees. But, in recent years, as I have already shown, more and more employers are refusing to do so. As a result, whereas the divisions used to arrange for voluntary payment of a very large proportion of back wages, collections are now running on an average of about 35 percent, and in some regions, as low as 11 percent. One reason for this is that the employers who do pay are placed at a competitive disadvantage with respect to those who do not. Another is that an employer is deterred from making restitution because by acknowledging his violation he obviously becomes vulnerable to a suit for liquidated damages.

I am confident that nearly all employers found in violation would pay back wages due if they knew that the Administrator had the authority to collect, and if they were certain that they would be protected against 16 (b) suits if they paid up. But, it would not be equitable merely to grant the Administrator authority to collect the money without giving him the right to sue for it. This would mean that the more conscientious and the more timid employers would come in and pay up while the remaining employers would not pay. Under the law all employers should be treated alike.

The proposed amendment would not in any way affect the Divisions' use of criminal proceedings or injunction suits where violations are willful and flagrant or involve falsification of records. Nor would it impair the right of the employees to sue under section 16 (b) rather than rely on the action of the Administrator if they chose. Suit under this amendment would be brought only in those cases where an employer refused to pay back wages due. And I am sure such suits would be few, for, as I have said, employers would pay back wages legally due if they know the Divisions had the authority to collect, especially if provision was also

made to relieve them of double liability when simple restitution of wages legally due and not willfully withheld was made under the supervision of the Divisions. This result is confirmed by experience in the States.

We are being asked to increase the minimum wage to 75 cents so that the national minimum should again reflect an income level which will afford American employees a decent minimum standard of living. This increase is essential in order that the minimum wage have some relation to the increased cost of living, provide the lowest paid workers at least approximately the same purchasing power as they had before the war, and restore the balance between the wages of low-paid unorganized workers and the more highly paid skilled and organized workers. It is also necessary in order to eliminate unfair competition by a small group of employers who have not brought their wages in line with those prevailing in most industries, and to bolster purchasing power as a brake on declining economic activity, for the sake of the stability of all industry.

But any increase in the minimum wage may be purely illusory if the Administrator is not granted authority to collect back wages, and the right to sue if such payment is refused. Unless an effective means is provided for getting back wages paid, the employer can gamble upon not getting caught. For if he is caught all he has to do is come into compliance in the future without any penalty being imposed upon him whatsoever. He will have successfully cheated his employees out of their legally due wages; the employees will not have received the minimum wages and the purposes of the increased minimum would not have been effectuated.

The right of the Administrator to collect back wages would make the inspection service a more effective instrument for the enforcement of the act. It would result in an increase of confidence in the Divisions' ability to correct violations and secure back wages owed. It would promote a more fair and equitable treatment of both employees and employers under the act. It would safeguard to the low-paid workers the minimum wages legally due them. It would aid in obtaining compliance from those employers who will only comply if they know they will probably have nothing to gain by violating the law. Those employers who comply or wish to comply with the act have nothing to fear from this proposal. Those who attempt to evade its provisions would not be permitted to retain their unfair gains. Thus the right to sue would increase the equitable and effective enforcement of the act. I urge the adoption of this good amendment to this good law.

Mr. BUTLER. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. BUTLER. I have an amendment which I send to the desk and ask to have read.

The PRESIDING OFFICER. The clerk will state the amendment.

The CHIEF CLERK. On page 41, at the end of section 6, it is proposed to add the following new subsection:

(e) Section 13 (a) of such act is further amended by repealing clause (11) and inserting in lieu thereof the following: "(11) any switchboard operator employed in a public telephone exchange which has not more than 750 stations."

Mr. BUTLER. Mr. President, I have a short statement I wish to make in support of the amendment.

The PRESIDING OFFICER. The Senator from Florida has the floor.

Mr. BUTLER. Mr. President, will the Senator yield?

Mr. PEPPER. I was just going to say, with the concurrence of the Senator from Ohio, who no doubt will also be a member of the conference, I am willing to take the amendment to conference and consider it in conference.

Mr. TAFT. I am perfectly willing to do that. In principle, I assume that in all probability the exemption of stations of 750 today probably would not cover any cities or towns which were not covered by the 500 exemption 10 years ago when the bill was passed. There has been a rapid increase in stations.

Mr. PEPPER. That was rather my feeling about it.

Mr. TAFT. I do not have the figures. I think the conference committee could consider it at least and see whether it should be done. According to the figures furnished me, there are 10,000 exchanges having 500 subscribers or less. There are about 580 exchanges having between 500 and 750 subscribers. If the amendment were finally adopted, I do not think it would affect more than 2,000 or 3,000 employees.

Mr. PEPPER. We shall be glad to take the amendment to conference. If the Senator desires to submit a statement for the RECORD in substantiation of the amendment, we shall be very glad to have it.

Mr. BUTLER. Mr. President, I submit the statement for the RECORD, and ask that it be printed as a part of my remarks at this point.

Mr. PEPPER. We are very glad to have it.

Mr. BUTLER. I have in the statement certain of the figures the Senator wanted.

Mr. PEPPER. I thank the Senator very much.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Mr. President, I present for the consideration of the Senate an amendment I have prepared which would exempt from the minimum-wage and maximum-hour sections of the Fair Labor Standards Act all rural telephone companies having less than 750 stations. The present act provides such an exemption only for such companies having less than 500 stations.

By way of background, I might explain that when the original Wage-Hour Act was passed, no exemption was provided for these small telephone companies. Very soon, however, it was realized that the little rural exchanges were in no position to comply with the provisions of the act. I believe it was generally assumed that such companies would not be affected by the act anyhow, since such a very small percentage of their business was interstate. However, the Administrator ruled that they were covered by the act. Very promptly, therefore, an amendment to the original act was passed, providing an exemption for such exchanges having less than 500 stations.

The bill reported by the committee proposes to leave this exemption just as it is; in other words, to continue the exemption for companies having less than 500 stations The difficulty with that, Mr. President, is that a great many of these small exchanges in the little country towns have added on enough customers so that they are no longer covered by the exemptions. A great many of the exchanges that had perhaps three- or four-hundred-odd stations back in 1938 now have five or six hundred. That is due to the greater prosperity in the rural sections of the country that has come about during the last few years, which has enabled many farm families to afford telephone service who never could before. I believe that my amendment really comes close to carrying out the original intent of the act by exempting most of the smaller independent companies which serve small-town or rural sections.

In practically every State, telephone rates are regulated by the State commission, and, of course, we all know that those rates are based primarily on costs of operation. It is obvious that if their costs go up, it will be necessary to raise rates to subscribers. In many farming regions, the subscribers simply will not stand for an increase in rates, and it will simply mean that many subscribers will discontinue their phone service. I do not believe we want to bring about that result, Mr. President. We should be aiming at methods to expand telephone service in the rural regions, instead of passing regulations that will have the effect of cutting down the availability of such service. No one who has lived on a farm several miles from town—perhaps a mile or more from the nearest neighbor—will deny the extreme importance of permitting every family to have its own telephone. In case of sickness or some other emergency, a telephone frequently makes the difference between life and death. I do not believe the Congress should take any action that will place the telephone service in these sections beyond the reach of the average farm family. We do not have enough telephones on the farm today, Mr. President. I certainly don't believe the Congress should take any action to make it still more difficult for the farmer to acquire such service.

I have been supplied with a tabulation as to how the independent telephone companies of the country are affected by the Fair Labor Standards Act. I am referring now just to the independent telephone companies and not to the Bell companies. Of the 19,000 exchanges in the entire country, Mr. President, more than 11,000 are operated by independent telephone companies. Of these 11,000 exchanges, almost 10,000 serve less than 500 telephones and are, therefore, already exempted under the law and under the proposed bill of the committee. About 500 more would be exempted by my amendment. About 150 more are in the class having between 750 and 1,000 stations, while less than 500 have more than 1,000 stations. My amendment, therefore, relates to this small group of approximately 500 independent companies out of the 11,000 independent exchanges. I believe that my amendment, therefore, carries out the real intent of the original exemption which was designed to exempt those exchanges primarily serving small town and rural communities. Certainly any town of any substantial size at all, together with the nearby rural subscribers, has a great many more than 750 stations on its exchange and would not be affected at all by this amendment.

I estimate that between 3,000 and 4,000 switchboard operators would be affected by the amendment. In other words, the amendment relates to exchanges where not more than two or perhaps occasionally three operators are on duty at any one time. It is important to realize that if, as expected, the application of the 75-cent minimum forces a sharp increase in rates and results in many subscribers dropping their telephones, it will mean unemployment among the very group that this bill is designed to benefit—that is, the telephone operators themselves. If several hundred present subscribers discontinue their service at each of the exchanges affected, it will mean that one or two or three of these operators will be laid off at those exchanges.

Mr. President, I hope very much that the Senate will adopt this amendment and take it to conference. The House committee in reporting the bill recommended the 750

exemption, and I believe that those most familiar with the problems of the industry are generally in favor of it. I do not believe that we should pass any legislation right now that will seriously hamper the program of extending telephone service to every farm home in the country.

Mr. DOUGLAS Mr. President, I ask unanimous consent to have inserted in the body of the RECORD at this point a statement which I prepared on the child-labor provisions of the bill. It would abbreviate the discussion if it were printed rather than stated.

The PRESIDING OFFICER. Is there objection?

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR DOUGLAS ON CHILD LABOR PROVISIONS OF NEW WAGES-AND-HOURS BILL, S. 653

The wages-and-hours bill (S. 653) which the Senate now has before it makes two very important improvements in the present child labor provisions: (1) By shifting the test of regulation from goods shipped in interstate commerce to employment "in commerce or in the production of goods for commerce," it decreases by about 125,000 the number of children and juveniles under 18 who can be "oppressively" employed, and (2) by making more definite the rules concerning the relation of child labor in agriculture to school attendance, it protects the children of migratory farm workers and others who are outside the compulsory attendance requirements of the States. I shall briefly discuss each of these points.

1. The original Fair Labor Standards Act did not directly regulate the employment of children in the interstate commerce or the production of goods for commerce. Instead, it tried to do so indirectly by prohibiting the shipment in interestate commerce of goods which within a previous span of 30 days had been worked on by "oppressive child labor"—namely, by children under the age of 16 and, in certain specific cases, under the age of 18 where the work was held to be especially dangerous or injurious to health. In effect, such goods were declared to be "hot and contaminated cargo" which were to be quarantined for 30 days before they could enter into the stream of interstate commerce.

This curious and clumsy provision was directly taken over from the Child Labor Act of 1916 when the overruling majority of judges believed that the Federal Government had no direct power to regulate employment in manufacturing and mining. The attempt was therefore made by Congress in 1916 to reach the same end indirectly by controlling the shipment of goods in interstate commerce which was produced by child labor. It was hoped in this way to build on the legal precedents which had previously upheld the power of Congress to deny shipment into interstate commerce of decayed eggs, diseased cattle, lottery tickets, and the transportation of women destined for immoral purposes. Despite these precedents, however, the Supreme Court in the case of *Hammer* v. *Dagenhart* (247 U. S. 251) ruled that the 1916 act was an unconstitutional exercise of the commerce clause. A later attempt to prohibit and regulate child labor under the taxing power was similarly declared unconstitutional (*Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20). Then attempts to ratify the child labor amendment of 1924 also failed.

The opponents of child labor were therefore extremely cautious when the Federal Fair Labor Standards Act was drafted in 1937 and passed in the next year. While the sections fixing minimum wages and standard hours of labor for adults engaged in interstate commerce and in the production of goods for commerce directly regulated these minimum wages and standard hours, the opponents of child labor were fearful that despite the five Labor Board cases of 1937, the Supreme Court might later hold that the fact the Wagner Act had been declared to be constitutional would not be a precedent for permitting the Federal Government to regulate or prohibit the labor of children in these industries. For while the Wagner Act could be justified on the ground that it was designed to prevent organizational strikes and hence aimed to ensure a free flow of commerce, no similar defense could be put up for the direct regulation of employment which was embodied in the Fair Labor Standards Act.

The opponents of child labor were, therefore, afraid in 1938 to take the chance of direct regulation which was being followed in the wages-and-hours section of the act and instead fell back upon the "hot cargo" features of the 1916 law which they thought would have a better chance of being upheld by the Supreme Court. But this method, in practice, has proved to have a number of defects, such as the following: (a) Since only the shipment of goods was regulated, child labor in the form of providing services in transportation was excluded from coverage. This meant that children employed as drivers, loaders, and helpers for interstate trucking concerns, children employed on railroads and boats and those in the communications industries were denied the protection of the act. These number altogether over a hundred thousand.

(b) It became possible for some employers to employ children and then to hold back the goods for more than 30 days and afterward ship them. This has been practiced in the case of lumbering and canning and is perfectly legal under the present law. I do not know how many children have been deprived of protection in this fashion but certainly the administrative complications of discovering how long goods have been held before being shipped have been very real and extremely burdensome.

Now let it be noted that the Supreme Court in the case of *U. S.* v. *Darby* (312 U. S. 100) held in 1940 that the Federal Government did have the power to regulate wages and hours in both commerce and the production of goods for commerce. Consequently, it would be similarly constitutional directly to regulate or prohibit oppressive child labor in these lines. In the present bill we are therefore asking the Federal Government to assume these powers and to include in the coverage the children whom I have mentioned and who have hitherto been excluded.

I do not believe there is any real opposition to this proposal. If it is against the public interest for children to work in a factory, it is similarly against the public interest for them to work on a boat or railway in interstate commerce or on trucks and busses which are in the flow of interstate commerce.

Furthermore since some of this work, such as lumbering and trucking, is particularly dangerous, there is no reason why children from 16 to 18 should be denied the necessary protection which others of a similar age are given. Here it should be noted that, as the distinguished Senator from Florida stated on the floor on Monday (CONGRESSIONAL RECORD, p. 12439) the committee has accepted an amendment which would exempt children who deliver newspapers to the consumer. Also exempted are child actors of all descriptions (p. 12435), while the administrator is also authorized to permit the payment of less than 75 cents an hour to juveniles under the age of 18 who are primarily engaged in the delivery of messages (p. 12440).

2. The second main improvement which the bill makes is in the field of farming. Let us be clear from the outset There is no Federal regulation at any time or anyway for children who work on their parent's farms and we do not propose that there should be any.

But there is child labor in commercial agriculture where children are hired to weed and to harvest the crop. Sometimes these children are hired directly by an outside large-scale farm. Sometimes the head of a family will be paid a piece rate and it then becomes a nice legal question whether his children are working for him or for the farmer or landowner who lets out the contract. While the 1938 Fair Labor Standards Act extended the child-labor provisions to these types of agriculture (which was not done in the case of wages and hours for adults), it does so only when the children are not legally required to attend school (sec. 13c).

This clause has opened the way to abuses. Some States, for example, do not require the children of migrant laborers to attend school and since these youngsters did not have to go to school, they are, therefore, excluded from the children's labor provisions of the present act. Similarly, some States do not require all children to attend school for all of the school term and these, therefore, are now excluded.

The present bill plugs these gaps by providing that the exclusion shall only apply outside of school hours. This provision permits children to work outside of school hours and during school vacations on any farm, commercial as well as family. But they cannot be hired out to work during school hours for someone who is not their parent. This not only protects the children of migratory laborers from excessive work, but it also encourages States and school districts to get more of the children in school. It thus removes the present discrimination against rural children by giving them the same freedom to attend school which is now given to city youngsters. The act does not prescribe education. That is properly left to the States and localities. But it does push back the temptation to hire children for projects during school hours when they should be getting such education as the localities may come to provide.

Taken as a whole, these provisions are a constructive advance and, in my judgment, should be enacted into law.

Mr. PEPPER. Mr. President, that disposes for the present of all the committee amendments which we care to bring up, and we might proceed to the consideration of amendments offered from the floor.

The PRESIDING OFFICER (Mr. MAGNUSON in the chair). The committee amendment is open to further amendment.

Mr. HOLLAND. Mr. President, I wish to speak as briefly as I may upon an amendment which has been proposed by the Senator from Iowa [Mr. GILLETTE], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Nebraska [Mr. WHERRY], the Senator from New Hampshire [Mr. BRIDGES], the Senator from Pennsylvania [Mr. MARTIN], and myself, which amendment is proposed to clause 2 of section 13 (a) of the Fair Labor Standards Act of 1938. I ask at this time, Mr. President, that the proposed amendment may be printed in full at this point as a part of my remarks.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield to the Senator from Ohio.

Mr. TAFT. I suggest to the Senator that he might offer the amendment so that it will be pending before the Senate.

Mr. HOLLAND. I appreciate the Senator's suggestion, Mr. President, and I offer the amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment offered by the Senator from Florida, for himself and other Senators.

The CHIEF CLERK. On page 41, after line 17, it is proposed to insert the following:

(e) Section 13 (a) of such act is further amended by striking out clause (2) thereof and inserting in lieu thereof the following:

"(2) Any employee employed by any retail or service establishment, more than 50 percent of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located. A 'retail or service establishment' shall mean an establishment 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or (3) any employee employed by any establishment engaged in laundering, cleaning or repairing clothing or fabrics, more than 50 percent of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located, provided that 75 percent of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation, or communication business."

Renumber the remaining clauses of section 13 (a) in proper sequence.

Mr. ELLENDER. Mr. President, if the Senator will yield, I should like to suggest the absence of a quorum.

Mr. HOLLAND. I yield for that purpose.

Mr. ELLENDER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hickenlooper	Murray
Anderson	Hill	Myers
Brewster	Hoey	Neely
Bridges	Holland	O'Conor
Butler	Humphrey	O'Mahoney
Byrd	Ives	Pepper
Cain	Johnson, Tex.	Reed
Capehart	Johnston, S. C.	Robertson
Chapman	Kefauver	Saltonstall
Chavez	Kem	Schoeppel
Connally	Kerr	Smith, Maine
Cordon	Kilgore	Smith, N. J.
Donnell	Knowland	Sparkman
Douglas	Langer	Stennis
Dulles	Leahy	Taft
Eastland	Long	Taylor
Ecton	Lucas	Thomas, Okla.
Ellender	McCarthy	Thomas, Utah
Flanders	McClellan	Thye
Frear	McFarland	Tobey
Fulbright	McKellar	Tydings
George	McMahon	Vandenberg
Gillette	Magnuson	Watkins
Graham	Malone	Wherry
Green	Martin	Wiley
Gurney	Miller	Williams
Hayden	Millikin	Withers
Hendrickson	Mundt	Young

The PRESIDING OFFICER. A quorum is present.

Mr. HOLLAND. Mr. President, in my judgment no bill increasing the minimum wage in the Fair Labor Standards Act should become law without at the same time clarifying the retail and service establishment exemptions in the act. For the purpose of the record I shall at this time read the exemption which at present is in the act, and which appears in section 13 (a) 2. I quote:

Any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.

Mr. President, it will be apparent that under the provision of the present law which allows exemptions to employees of retail and service establishments there is no spelling out whatever of any definition of what constitutes a retail establishment or a service establishment; to the contrary, it is left in the air entirely as to just what Congress had in mind at the time it wrote that provision into the law in 1938.

Mr. PEPPER. Mr. President, will my colleague yield for a clarification?

Mr. HOLLAND. I yield.

Mr. PEPPER. The present law does not define what is a retailer. Am I correct in that?

Mr. HOLLAND. That is correct.

Mr. PEPPER. Am I correct also, if it is within the knowledge of my distinguished colleague, that the Wage-Hour Administrator has laid down certain criteria which attempt to aid in the definition of retailer or the operator of a retail service establishment?

Mr. HOLLAND. That is correct. The Wage-Hour Administrator is given no regulatory power, under the law, but he has assumed to give interpretative rulings which are regarded as administrative rulings, and for the purpose of clarifying the act have been all that industries could discover to clarify their status under the act.

Mr. PEPPER. Am I correct, then, in understanding that while the able Senator's amendment does not designedly intend to affect the amount of intrastate business which the retailer or the operator of a service establishment may carry on, it is the purpose and it would be the effect of the distinguished Senator's amendment to change, for all practical purposes, the definition of retail establishment and retail service enterprise as it is presently held by the Wage-Hour Administrator?

Mr. HOLLAND. The purpose of the sponsors of the amendment, including the junior Senator from Florida, is to clarify the present law, and make it increasingly clear, as completely clear as possible, to retail establishments and service establishments, which in our opinion were not included within the provisions of the original law, but whose idea of the law, because of the interpretative rulings which have been put out from time to time, and of various decisions which have largely been based upon those interpretative rulings, is not clear, but instead is very much muddied by the developments under the original law and the interpretative rulings.

It is our desire to clarify entirely the status of retail and service establishments by defining them, and letting them know beyond any peradventure of a doubt, whether and when they are in fact exempt from the provisions of the law. We think that objective is much more important now than it has been heretofore, because of the intended increase in the minimum wage to 75 cents an hour. We do know that the apprehension on the part of many persons engaged in the retail and service establishments of the country is great because of the increased minimum wage which is proposed, and because of the fact that their position is not being clarified by S. 653, but, instead, the entire lack of clarification and the confusion which have resulted and have existed up to this time will be continued.

It is the view of the sponsors of the amendment that it is the duty of Congress at this time, while the act is being amended, to clarify the meaning of the terms "retail establishment" and "service establishment," so that every person affected thereby, both employers and employees, including, of course, the Administrator and his staff, as well, may know who are intended to be exempted from the workings of the wage-and-hour law by the provision now proposed to be inserted in the law.

HISTORICAL BACKGROUND OF RETAIL AND SERVICE ESTABLISHMENT EXEMPTION

Before discussing the provisions of the amendment that we are proposing, permit me to review the historical background of this exemption.

STATEMENT OF PRESIDENT ROOSEVELT

On May 24, 1937, President Roosevelt sent a message to the Seventy-fifth Congress requesting the enactment of minimum wage and maximum hour legislation for those "who toil in factory." He also stated:

And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade.

Thus twice in this lead-off paragraph President Roosevelt made it clear that he was basing this approach upon the interstate commerce clause of the Constitution.

I continue quoting from President Roosevelt:

Although a goodly portion of the goods of American industry move in interstate commerce and will be covered by the legislation which we recommend, there are many purely local pursuits and services which no Federal legislation can effectively cover.

STATEMENT OF SENATOR BLACK

In introducing consideration of the bill in the Senate, Senator Black, now Mr. Justice Black, of the Supreme Court of the United States, said:

It provides a method of obtaining the objective of minimum wages and maximum working hours in industries throughout the Nation which engage in the transportation of their goods in interstate commerce. It is not intended to, and does not, attempt to provide by Federal legislation the fixing of minimum wages and maximum hours of employment in all the varied peculiarly local business units of the Nation.

In that opening statement of then Senator Black it was made clear again that this bill was based upon the operation of the interstate commerce clause, and that it was not contemplated in any way to fix minimum wages and maximum hours of employment in those varied and peculiarly local business units of the Nation.

I continue to quote from Senator Black:

So the bill, insofar as it relates to maximum hours of employment and minimum wages, is limited, except to the small extent I have heretofore indicated (section 8 (a)), summarized above in paragraph 4 (1) (b), to goods which are actually manufactured for transportation and are transported in interstate commerce. We, therefore, eliminate in the beginning any idea that this is an effort to regulate wages and hours in the various service employments throughout the Nation.

The reason for this limitation, said Senator Black, was twofold: Firstly, because the bill "rests squarely upon the interstate-commerce clause" of the Constitution, and, secondly, because it was the prevailing, if not unanimous, sentiment of the committee that—

Businesses of a purely local type which serve a particular community, and which do not send their products into the streams of interstate commerce, can be better regulated by the laws of the communities and of the States in which the business units operate.

Mr. President, I do not believe that the philosophy of this act could have been more clearly stated as being based upon the interstate-commerce clause and as being intendedly kept from any application to businesses that operated within State lines than is shown by these preliminary statements by President Roosevelt and by Senator Black at the time of the introduction of a bill which became, by passage by Congress and approval of the President, the wage-and-hour law.

STATEMENT OF CONGRESSMAN CELLER

When the original bill was debated in the House in 1938, Congressman CELLER, of New York, now chairman of the House Judiciary Committee, offered the amendment which was the basic draft of the present exemption now in the law. Notwithstanding that the House had been assured by Mrs. NORTON, chairman of the House Labor Committee, that the law would not be applied to the retail and service trades because they were not sufficiently related to the stream of interstate commerce, Mr. CELLER insisted upon his amendment. He stated:

Dissolve all doubt, dispel all chance of misinterpretation, accept it (his amendment) and then retail dry goods, retail butchering, grocers, retail clothing stores, department stores will all be exempt.

Mrs. NORTON responded:

I think this amendment will not weaken our bill but will, in fact, strengthen it. Therefore, I ask the committee to stand with us in accepting this amendment.

The Celler amendment, having been accepted by the committee, was passed by the House and with certain changes not material here, was retained by the conference committee and was in the bill as finally enacted by Congress in 1938.

I have already read from the bill the exact language in which the amendment was incorporated into that act and in which it still remains in that act.

The original reasons, as shown by the debates and the records of the hearings, for exempting retail and service establishments were three in number—and I ask Senators to follow these closely:

First. The fact that complete reliance must be placed on the interstate commerce clause. And that it was only by and through the operation of that clause that jurisdiction was given to the Congress. It was only by remaining within the jurisdiction of that clause that the bill could remain on safe ground.

Second. That there were wide variations in wage scales and hours of work in these particular establishments, that is retail and service establishments; and,

Third. That there was great difficulty in enforcing Federal wage-and-hour regulations in local business.

In the course of his presentation Senator Black sought occasion to bring into the RECORD and to state in the RECORD—though I shall not quote him now—the fact that in the attempt at enforcement of NRA, the law, and the regulations thereunder, it had been found a hopeless task to enforce Nation-wide regulations against local businesses in the classes mentioned as to which conditions were so completely variable in the various States of the Nation and in the various communities within any State.

It is plain from the history and language of the exemption that Congress intended to exempt two types of establishments. First, retail establishments, and second, service establishments. The retail establishment is the establishment selling goods. The service establishment is the one rendering service, such as the hotel, laundry, restaurant, the repair garage, and the beauty parlor. Of course, some establishments both sell goods and render services, such as a hotel, which provides lodging and also sells food.

We must not lose sight of the fact that the Fair Labor Standards Act is not only a minimum-wage law, but also a maximum-hours law.

I have already mentioned that much of the present apprehension on the part of retailers and service establishments throughout the Nation is because of the proposed increase in the minimum wage and also because of the possible effect of the maximum hours on their particular business.

Unlike most businesses producing goods for commerce, retail and service businesses outside of the metropolitan areas are operated on a 6-day workweek. Most States prescribing maximum hours standards for women and minors in merchandising establishments provide an 8-hour day and a 48-hour workweek. Retail and service businesses operate on a 6-day workweek because they are necessarily adapted to the living requirements and buying habits of their communities. For example, the coal dealer delivers coal and fuel to homes, apartment buildings, and hotels 6 days a week. The housewife does her shopping at the grocery store, the shoe store, and the clothing store 6 days a week, the heaviest shopping day being Saturday. Repair garages normally operate 6 days a week servicing and repairing cars and local delivery and farmers' trucks. A great deal of the farmer's buying from lumber yards, hardware stores, or other shops and establishments occurs on Saturday. Unless drastic changes are made in our living habits it is reasonable to assume that most retail and service businesses must continue to operate for at least 48 hours a week or longer to serve the needs of their respective communities. Where processors of goods for commerce are required to operate for more than 40 hours, they have found it practicable, because of the size of their labor pool, to introduce a staggered-shift system or work which avoids the increased cost of overtime compensation.

So far as most retail and service businesses are concerned, it is very doubtful whether such a device would be possible. It is true that some of the larger stores in our bigger cities have found it feasible to limit the workweek of their employees to 40 hours by granting a day off each week, but this would not be feasible in the case of the thousands of small retail and service businesses located in our smaller communities, unless they increase their labor force.

As to the question of increase in the minimum wage to 75 cents an hour, no evidence was submitted to the committee showing that wages can be raised to 75 cents an hour in this field without substantially curtailing employment. Such evidence as was presented to the committee showed that the impact of a 75-cent minimum in the retailing industries, for example, would have the effect of substantially curtailing employment. A recent survey made by the Illinois Federation of Retail Associations shows that 1,896 out of 4,607 employees in 368 stores located outside the metropolitan areas in Illinois received less than 55 cents an hour. The average number of employees per store was found to be 12. Seventy percent of the employees were found to be females and male minors, and 30 percent only were found to be male adults.

I wish the Senate would note that the survey which I have just described was made in Illinois. I am not talking obout my own State of Florida or any other Southern or Western State, where, in many places, we all know that the average would be lower, and where the impact of a 75-cent minimum might be even greater.

As a result of court rulings and administrative interpretations tens of thousands of establishments throughout the country which have tradtionally been recognized as retail are in doubt as to whether the exemption applies to them. Without such clarification as we propose in our amendment it is very possible that these establishments will accrue many millions of dollars of retroactive liability.

The Administrator of the Wage and Hour Division, Mr. McComb, has recognized the doubt which surrounds the meaning of the present retail and service establishment exemptions, and has urged Congress to clarify such doubt. I refer to the Administrator's annual report to

Congress for 1948, particularly pages 118 to 123, inclusive. The doubt arose because the Administrator and the courts, including the United States Supreme Court, ruled that the sale of goods and services for business use, as distinguished from family or household use, was not retail.

Mr. President, that is the real milk in the coconut in our particular amendment. It will be found upon reading the recommendations for changes as made by the Administrator of the Wage and Hour Act that he himself recommends a change. He himself says that a change is necessary. No one can tell under present conditions whether he is in the clear or not, or whether he is exempt or included within the act, in many classifications of retail and service establishments. But the difference between his suggestions and those included in this amendment is that the suggestions of the Administrator are predicated upon continuing the requirement that the sale of goods and services for business use can never be a retail sale and can never come within the purview of this exemption. I shall dwell at greater length upon this question later, but I think it is proper at this time to say that that is the nub of this controversy, because the Administrator himself has in so many words, and at considerable length, insisted that changes be made in the law, and he has recommended to the Congress that amendments be made.

At this time I ask unanimous consent that there be printed in the RECORD at this point as a part of my remarks a portion of the 1948 annual report of the Administrator of the Fair Labor Standards Act. I refer to that section beginning on page 118, under the heading "Retail or service establishments," and running to the next heading, nine lines from the top of page 123.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

RETAIL OF SERVICE ESTABLISHMENTS

In view of Supreme Court decisions on the subject, it is recommended that the Congress consider amending the Fair Labor Standards Act to remove doubt in application of the section 13 (a) (2) exemption for any employee engaged in a retail or service establishment the greater part of whose sales or services is in intrastate commerce. By incorporation in the act of specific language similar to that used in the tests applied by the Divisions in determining the eligibility of an establishment for the exemption, doubt raised about the application of the tests in varying situations would be removed and uniformity in administration of the act could be achieved.

At present, the Divisions hold that the exemption applies to employees engaged in an establishment that meets two requirements: (1) It must be a retail or service establishment and (2) the greater part of its selling or servicing must be in intrastate commerce.

The second requirement is regarded as met in a situation where it is determined that more than 50 percent of the total gross receipts of the establishment is derived from selling or servicing in intrastate commerce, defined for purposes of this exemption as a sale or service in which all elements of the transaction take place within the same State. The determinations with respect to this requirement have not proved difficult to apply.

The first requirement, however, entails consideration of several factors to determine whether the transactions carried on by the establishment are such as to characterize it as a retail or service establishment. While other characteristics of the establishment must be considered, it is clear at once that an establishment engaged to a substantial extent in making nonretail sales or performing nonretail servicing cannot be regarded as a retail or service establishment. The Supreme Court has stated that the same general principles apply to service establishments as to retail establishments for purposes of this exemption.

The basic test in determining whether a sale is a retail sale is the purpose of the buyer. A transaction in which goods are bought for personal use by a private consumer is a retail sale; the sale of goods for resale or other business use or, in general, for use by any purchaser other than the private consumer is a nonretail transaction. This distinction represents standard usage of marketing experts, and was adopted by the Supreme Court in the cases dealing with the section 13 (a) (2) exemption.

The Divisions consistently have used this test in distinguishing retail from nonretail transactions. In applying the test the Divisions have used, for enforcement purposes, a 25-percent tolerance, so that the exemption is considered defeated when the nonretail transactions of the establishment over a 6-month period exceed, in value, 25 percent of the establishment's total dollar revenues. In order to deal practically with the problem presented by establishments engaged in selling goods used by both private individuals and business or other nonprivate purchasers, the Divisions have used a "price-quantity test" for determining whether a particular transaction is retail or nonretail.

Under this test a sale to a business or other nonprivate purchaser is considered a retail sale unless it is made in quantity materially in excess of the quantity usually purchased by a private purchaser and, except for lumber and building materials, at a price lower than that paid by a private purchaser. The use of this test makes it unnecessary to require the keeping of records not ordinarily maintained by establishments making many over-the-counter sales to customers who buy in small quantities, pay cash, and do not normally disclose the purpose of their purchase. While the price test has not contributed significantly to effective application of this provision of the act, the quantity test is a reasonable and practical guide and has proved valuable in enforcement.

PROBLEMS RAISED

The great majority of situations involving the exemption have not presented any particular problems under the guides followed by the Divisions in ascertaining whether the exemption provided in that section of the act applies. But the exceptions, while few, have raised difficult problems.

With respect to dealers in lumber and building materials, the Divisions have used the quantity test, but not the price test. It has been the Divisions' position that sales not involving a quantity of goods materially in excess of that normally involved in a sale to the general consuming public is a retail sale. Sales of lumber and building materials to a contractor who purchases the goods on behalf of a private individual to build a home for that individual are considered retail sales.

The Divisions' position as to the status of farm implement dealers under the exemption was clarified in a release (R–1741) issued on February 12, 1942. The release stated that sales of farm implements to a farmer were considered by the Divisions to be retail sales.

Associations and dealers in coal, lumber, and farm implements have raised the question as to the effect that the 1946 decisions of the Supreme Court in two cases (*F. J. Boutell Service Co.* v. *Walling* and *Roland Electrical Co.* v. *Walling*) may have upon the Divisions' application of the exemptions to the business of their member groups. The Roland case involved a company engaged in selling industrial goods and services to manufacturers engaged in the production of goods for commerce and to other industrial and business customers. The stipulation of facts in this case includes the statement that 99 percent of the active accounts of the company were with commercial or industrial firms. The Boutell case involved an affiliated company engaged exclusively in performing services as mechanics and repairmen on a fleet of trucks used in interstate commerce by the parent company.

The Court did not have occasion in these cases to pass on the Divisions' 25-percent test, although it referred with apparent approval to the Divisions' position that the exemption does not extend to establishments in which a substantial amount of the business is with industrial or business users. Government agencies, institutions, and similar customers. The Court appeared to recognize that the retail or nonretail character of a transaction may be tested both by the type of customer and by the quantity involved, and referred to the interpretations of the Administrator as reinforcing this position.

On the other hand, these decisions and others, including *Martino* v. *Michigan Window Cleaning Co.* (1946), cast grave doubt on whether the Supreme Court will uphold the position that the sale to and servicing for farmers of farm equipment is exempt-type selling or servicing. The Court in the Martino case again held that "servicing customers for whom such services were necessary in their production of goods for interstate commerce" is not exempt servicing under section 13 (a) (2). Also, these decisions raise serious problems as to whether the Divisions' test of what is "selling or servicing in intrastate commerce" is too narrow, and whether the courts may broadly hold that no selling or servicing which constitutes engagement in commerce or in the production of goods for commerce is "in intrastate commerce" for purposes of the exemption, even though all elements of the transaction take place within the same State.

These problems are difficult, and the Administrator has been giving careful consideration to the question whether or to what extent the decisions of the Supreme Court necessitate revision of the position stated in the interpretations previously issued on these points. It is his firm conviction that the guides used by the Divisions in applying the section 13 (a) (2) exemption are reasonable, and are necessary to the effective enforcement of that provision. However, since there is serious doubt as to whether the present language of the statute supports them, he believes the statute should be amended to do so.

RECOMMENDATION

Section 13 (a) (2), then, should include the 25-percent tolerance and the quantity test. Provision also should be made in the amended statute for the problem presented with respect to farm-equipment dealers and others on sales to farmers, and on the interpretation of selling "in intrastate commerce."

The Administrator, therefore, recommends that statutory language be added to the present section 13 (a) (2) to accomplish this purpose. The amending language should provide that for the purpose of section 13

(a) (2) an establishment shall not be deemed to be a retail or service establishment if more than 25 percent of its semiannual gross receipts is derived from activities other than (1) selling or servicing to private individuals for personal or family consumption; (2) selling or servicing (but not for resale) to any type of customer if neither the type nor the quantity of goods sold or serviced differs materially from the type or quantity characteristic of the transactions described in (1) above; selling to farmers, or servicing for farmers, goods of types and quantities used by the ordinary farmer in his farming operations. The amendment should further provide that for the purpose of section 13 (a) (2) selling or servicing in intrastate commerce shall be deemed to include any selling or servicing transaction in which no element of the transaction takes place outside the State where the establishment is located and no transportation, transmission, or communication across State lines is involved.

Such an amendment would embody in the statute the guides used by the Divisions in applying the exemption, with the exception of the price test. That test has in the past been used together with the quantity test, but has contributed little if anything to the practical problem of employers and of the Divisions' inspectors in distinguishing between retail and nonretail transactions. In ordinary times and in practically all industries large quantity sales are made at discounts. In some industries and localities, particularly with a seller's market, the discounts may disappear, although nothing else has changed in the transaction. The price test has never been applied to dealers in lumber and building materials.

QUANTITY TEST IMPORTANT

However, the quantity test is highly important and useful. In the decision in the Roland case the Supreme Court said:

"The verb 'retail' means 'to sell in small quantities, as by the single yard, pound, gallon, etc.; to sell directly to the consumer; as, to retail cloth or groceries.' " (Webster's New International Dictionary, Unabridged (2d ed., 1938).)

The recognition accorded to a quantity test by the Supreme Court confirms the view that the Divisions have been considering, that the quantity test should be continued and should stand by itself. This eliminates the confusion to employers and inspectors, in checking back on transactions in goods subject to frequent price fluctuations and variability, that would result from trying to determine whether a price differential on a large quantity sale represented the shading of the price, a fluctuation in the market, or a trade or quantity discount. Therefore, the quantity test is retained in the Administrator's proposed amendment.

The proposed amendment also would solve the problem illustrated by the situation of the farm-implement dealers, a problem which applies also to such establishments as lumber dealers, hardware stores, or general stores, located in rural counties where nearly all of their customers are farmers. In hundreds or even thousands of towns a position that the sale of goods used by a farmer in connection with his farming activity is counted against the 25 percent nonretail tolerance would be tantamount to saying that there are no exempt retail establishments in these rural communities. If the Congress wishes to adopt this view, it should be clearly stated in the statute. The Administrator does not believe it was intended.

Also incorporated in the proposed amendment is the Divisions' guide for determining when the sales or services of an establishment constitute selling or servicing "in intrastate commerce" for purposes of the section 13 (a) (2) exemption. The importance of this definition in retaining the present scope of the exemption is readily apparent from the references previously made to recent Supreme Court decision involving section 13 (a) (2) and to the applicability of the exemption to dealers located in rural communities and selling primarily to farmers. If the legal reasoning of the Court were to develop along the line that any sale of goods or rendering of services used in the production of goods for commerce is selling or servicing in interstate commerce, there would be no point in saying that selling or servicing to farmers can be retail selling or servicing. The establishment making 50 percent or more of its sales to farmers would fail to meet the statutory test for local enterprise if the farmer customers produce goods for commerce. If the Congress wishes to retain the exemption for such establishments, the amendment should include the Divisions' interpretation of what constitutes a sale or service "in intrastate commerce" for purposes of section 13 (a) (2).

The effect of the proposal would be to clarify the present exemption contained in section 13 (a) (2) for retail and retail service establishments. It is not intended by this proposal to suggest that there should not be a reconsideration of this exemption in order to restrict it to the typical retailer serving householders in his neighborhood. During the last session of Congress proposals were made for eliminating the exemption for chain organizations as well as for independent retail establishments handling a substantial volume of commodities. The Administrator believes there is a great deal of merit in a proposal to eliminate the exemption for retail enterprises with far-flung interstate operations or which have substantial interstate effects but he is not prepared to make a specific recommendation at this time on the precise type of standard to be used to define the kind of retail enterprise which should be brought under the act. He does feel, however, that the act should not be made applicable to the vast majority of small local retail merchants serving their own community.

Mr. HOLLAND. Mr. President, I shall not attempt to read in extenso from the recommendations of the Administrator, but I think it would be well to read at least certain paragraphs from those recommendations. It will clearly appear that the Administrator has recognized—and it is an inescapable fact—that there is hopeless confusion in this field. Anyone who would stand for a continuation of that confusion, particularly in the face of an increase in the wage up to 75 cents, would be projecting upon many elements in the industries which are affected a very deep problem which affects their ability to continue to operate.

I read the first paragraph from the section of the report of the Administrator to which I have referred, and which has been ordered to be printed in the RECORD:

In view of Supreme Court decisions on the subject, it is recommended that the Congress consider amending the Fair Labor Standards Act to remove doubt in application of the section 13 (a) (2) exemption for any employee engaged in a retail or service establishment the greater part of whose sales or services is in intrastate commerce.

I digress long enough to say that the Administrator has limited this part of his report and this part of his recommendation entirely and exactly to that portion of the act to which our amendment is addressed.

I continue to quote from the same paragraph:

By incorporation in the act of specific language similar to that used in the tests applied by the divisions in determining the eligibility of an establishment for the exemption, doubt raised about the application of the tests in varying situations would be removed and uniformity in administration of the act could be achieved.

Mr. President, I have already heard it argued in this debate—and it will probably be argued further—that this amendment is meant to meet a decision of the United States Supreme Court and of other courts of the Federal judiciary. I call attention to the fact that in this recommendation and report of the Wage and Hour Administrator he makes it very clear that he recommends a change in the act, precisely because of the fact that the Supreme Court decisions have brought about a muddy condition in this particular field. The first six words of his recommendation are:

In view of Supreme Court decisions—

I shall not quote in great detail from the recommendation. I do quote, in the effort to be fair to the Administrator, his statement of the basic test. I have already stated to the Senate that it is upon that basic test that the issue is made which is included within our amendment.

I quote the paragraph appearing at the middle of page 119, in the belief that it will make clear the recommendation and position of the Administrator:

The basic test in determining whether a sale is a retail sale is the purpose of the buyer. A transaction in which goods are bought for personal use by a private consumer is a retail sale; the sale of goods for resale or other business use or, in general, for use by any purchaser other than the private consumer is a nonretail transaction. This distinction represents standard usage of marketing experts, and was adopted by the Supreme Court in the cases dealing with the section 13 (a) (2) exemption.

I believe that is a clear statement of the Administrator's position. He makes it very clear that his position is based upon a theory which he insists upon—and it is fair to say that he has insisted upon this theory in the formulation of his interpretative rulings; and the courts, persuaded by those interpretative rulings, have gone further and adopted them in some cases. The standard is that the purpose of the buyer determines the retail or nonretail character of the sale. I shall try to make that as clear as I can. In other words, he says—and this is exactly what he means—that if a housewife goes to a drygoods store to buy towels, that is a retail sale, but if the proprietor of a small hotel located in a small town, or even a village, goes into the same store, is served by the same clerk, buys the same number of towels, paying exactly the same price, under no circumstances can that sale be regarded as a retail sale, because it is for a business use.

There is no use arguing about it. That is exactly what the Administrator has ruled, and following his ruling the courts have set up, at least prima facie, the existence of that kind of interpretation. It is from that sort of silly, illusory, and

ridiculous interpretation that the merchants and service people of the Nation want to get away. Our amendment is confined to their effort to get away from that kind of interpretation.

One can search this amendment as he pleases, and he will find no item of manufacturing involved. There cannot be found in this amendment any matter which breaks down in the slightest the exclusion of interstate commerce or interstate business from the purview of the law. Instead, there is found in the amendment a complete clarification of other terms, including this one, and a completely clear statement that a business sale does not necessarily have to be a nonretail sale.

Mr. President, let me continue with my illustration, a fair illustration of what may happen any day in the town where any Senator may live. This shows how completely ridiculous and unfair the existing rule is. Let us say that the wife of the Senator from Mississippi goes to a furniture store to buy a bedroom suite of furniture, which later will be found in the home of the Senator from Mississippi and his family. That is a retail sale because the furniture is purchased for household use in the home where the Senator from Mississippi and his family reside. But, Mr. President, if the Senator's son or my son or any other young lawyer just starting out in business were to go to the same business establishment, and there were to be waited on by the same clerk, and there purchased, let us say, a modest desk for use in his law office, under the interpretations which have come down from the Wage and Hour Administrator, and which now to a certain extent have been frozen into the law by the approval of those interpretations by court rulings, that particular sale would be held to be, not a retail sale, but a business sale. No matter how small the size of the sale, it will not be held to be a retail sale, because the purchase is made for business use. There can be no doubt about that.

So it would be in the case of a purchase by a doctor or in the case of any other purchase whether small or large, made for business use. I am talking about sales which are so small in size that they cannot in any sense be called wholesale or cannot in any sense be subject to discounts because of large size. On the contrary, I am speaking of retail sales to the owner of a business. The existing regulations make that distinction, which I say is a false and an illusory one, and one which does not carry out in any sense what I believe to have been the intent of Congress.

Mr. President, at this point I should like to read a statement made by Representative CELLER, of New York, in the recent debates in the House of Representatives, dwelling upon this question. The debate took place on August 10, 1949. I have already related the fact that Representative CELLER was present at the time when the original wage and hour law was passed. He submitted the amendment which went into the law and constituted this particular exemption. I have already read from the RECORD of the debates at that time what he said on this particular subject. Now I read what he said a few days ago when this particular point was at issue in the House of Representatives:

Mr. CELLER. Mr. Chairman, I move to strike out the requisite number of words.

Mr. Chairman, permit me to dip a bit into the past history of the Wages and Hours Act and to point to the debates in this Chamber as of May 23, 1938, on the original bill. Just as there has been considerable doubt expressed this morning as to what is meant by "retail or service establishment," during that debate there was doubt likewise when the present act was debated. In order to give clarification to the language of the bill relative to retailing as submitted by the House Committee on Education and Labor I offered the following amendment: "but no such order is applicable to any retail industry the greater part of whose sales is in intrastate commerce."

In the debate that followed I said:

"Dissolve all doubt, dispel all chance of misinterpretation, accept it (my amendment) and then retail dry goods, retail butchering, grocers, retail clothing stores, department stores will all be exempt."

The gentlewoman from New Jersey [Mrs. NORTON], chairman of the House Committee on Labor, responded:

"I think this amendment will not weaken our bill but will in fact strengthen it. Therefore I ask the committee to stand with us in accepting this amendment."

My amendment was accepted. In the conference that resulted, my amendment was changed so that we finally have in the bill today section 13 (a) (2) following: "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce" shall be exempt.

Unfortunately, neither the committee nor the House or Senate defined in the old act what was a retail establishment or retail service establishment.

It will be noticed that Mr. CELLER, whose hindsight is better than his foresight was in 1938, states with regret that a definition was not placed in the bill in 1938 so that there would be no doubt as to what was intended.

I read further from Representative CELLER'S statement on the floor of the House on August 10, 1949:

As a result, there have been many interpretations of the language in section 13 (a) (2) by the courts, notably the Supreme Court in the case of *Roland Electrical Co.* v. *Walling* (326 U. S. 657), in which the Court held that an establishment was not retail unless it was engaged in making sales to meet personal and household needs rather than commercial or business needs.

This means that the following sales would not be retail: A hardware store to business customers, a coal dealer to an apartment house, hotel, or school, a furniture store to an office rather than to a home, an automobile supply store to a business outfit, a farm-implement dealer to farmers, and a stationery store to a business customer.

Mr. FLANDERS. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. FLANDERS. I note that in the Senator's quotation from Representative CELLER'S speech he mentions the case of the hardware dealer who makes a sale to a business purchaser. I do not note that the Senator's amendment will take care of that situation.

Mr. HOLLAND. It does take care of many phases of that situation, but it does not clearly take care of one additional phase of the situation which is proposed to be cared for by a second amendment which I understand will be offered by the distinguished Senator from Vermont—an amendment having to do with resale and giving a definition of "resale." A sale by a hardware store to a hotel involves no question at all, nor does a sale by a hardware store of equipment to a doctor, to be used in his office. There is a question in the case of a sale by a hardware store to a contractor who intends to use the material thus sold to him to make repairs to a residence. I understand that situation is to be taken care of by an amendment to be offered by the Senator from Vermont.

Mr. FLANDERS. That is true. The Senator from Florida does not consider that the amendment which I and other Senators will offer is out of line with the pending amendment; does he?

Mr. HOLLAND. No; not at all. I think it gives an additional exemption in the case of the class of sales to which I have just referred, and which may not be clearly included under the exemption provided in the amendment offered by myself and other Senators. Not only do I intend to approve the distinguished Senator's amendment, but I intend to support it, because in the drafting of this amendment there was no intention to work hardships on the hardware merchants or any other group of bona fide retailers who are doing business in intrastate commerce.

Mr. FLANDERS. I thank the Senator.

Mr. HOLLAND. Mr. President, I read further from the address made in the House of Representatives by Representative CELLER on August 10, 1949:

Mr. Chairman, may I say that the language used must and should be crystal clear. It cannot be clumsily worded. Otherwise doubt and misunderstanding arise. I maintain that the particular provisions of the Lesinski bill with reference to retailing are not clear and are full of ambiguity and will give rise to all matter and kinds of litigation—costly litigation.

When we remember that practically every dealer on Main Street will be confronted with this problem and will be also confronted with the danger of liability that might be retroactive, we must pause before we accept the very unusual wording of retail establishments and services as contained in the Lesinski bill. I am for the Lesinski principle of 75 cents minimum wage. I am for the Lesinski bill in general, with the exception that I think there should be clarification with reference to what is meant in that bill by the words that seek to describe retailing as to services and as to the sale of goods. I think the provisions of the Lucas bill on page 28, section 13 (a) (2), is such proper clarification that we should accept, and at the appropriate time I shall offer an amendment along those lines.

Mr. President, I am happy to say to the Senate the wording which is referred to by the gentleman from New York, Representative CELLER, in his statement is the precise wording which appeared in the Lucas bill, the precise wording which was adopted later by the House, and it is the precise wording which now appears in the amendment which has been offered by other Senators and myself. So it would appear that the amendment which we offered not only meets the

standard, in the eyes of Mr. CELLER, of being crystal clear, but that it also meets the problems of little dealers—as he says, "every dealer on Main Street"—who are confronted with the problem, and it meets it in such a way that he says he intended later to lift that provision out of the Lucas bill and offer it as an amendment; which was unnecessary, because the whole Lucas bill, containing this provision with others, was substituted for the then pending Lesinski bill.

I simply want to say to the Senate, so it cannot possibly be misunderstood, that the exact wording referred to by Mr. CELLER—who was, by the way, the author of this provision in the original bill in 1938, which is the wording now before the Senate, and which he says is crystal clear—meets the intentions and objectives which were in the minds of those who passed the original bill in 1938.

Mr. President, before I get away from the point, I may say it is highly important for us to remember we are approaching the end of the session, and it is highly important for us to remember that every time we can take action which does not require the subject matter to go to conference, it is desirable to do so, if we can do it without surrendering the principle. I remind the Senate that we now know that the provisions of the pending amendment are identical with the provisions of the bill as passed by the House and with the provisions which were reported by Mr. CELLER as being crystal clear in meeting the objectives of those who sponsored the original measure.

Mr. SPARKMAN. Mr. President, will the Senator yield for a question?

Mr. HOLLAND. I yield.

Mr. SPARKMAN. I wonder if the Senator from Florida can tell us whether, under the amendment offered by him, any of the groups that are now covered by the provisions of the Wage and Hour Act would be taken out from under the act; and if so, the approximate number.

Mr. HOLLAND. I am glad the Senator asked that question. I am told the Congressman from Texas [Mr. LUCAS] addressed an inquiry on that subject perhaps 2 weeks ago to the Wage and Hour Administrator, and he has not as yet received a report. I was told by my able colleague in a quite informal discussion some days ago that he understands about 25,000 who were included are removed by this amendment. I would say, however, that if only one who was included should be excluded by this amendment, I should still be in favor of it, because what is sought is to return the bill to its original meaning and to bring the bill into reasonable channels of enforcement and of business performance, which have certainly been greatly departed from under the interpretations which have been issued and which have at least in some respects gained the approval of the courts. My answer, to make it complete, would be this: Whatever number is included are included, if I understand the situation correctly, because of misinterpretations of the original intent, they should be excluded, and no one has reasonable ground of complaint if they be excluded, because they were not intended to be covered by the provisions of the original act, at least in the intention of its sponsors.

Mr. SPARKMAN. Mr. President, if the Senator will yield further, I may say the statement he has just made very largely answers the question I was preparing to ask, which was whether the purpose of the Senator's amendment was to draw more clearly the line which he feels would be in keeping with the intent of Congress in the enactment of the original act?

Mr. HOLLAND. That is exactly correct, and I may say I rely not only upon my own feeling that it will do so, but upon the statement of Mr. CELLER, who was the author of the original amendment, and who strongly stated only a few days ago in the words which I have just read, his feeling that this amendment does take care of the situation and carry out the objectives of those who supported the original provision.

Mr. PEPPER. Mr. President, will my colleague yield?

Mr. HOLLAND. I yield.

Mr. PEPPER. I do not know how long Mr. CELLER has been associated with this legislation, but I know some of the Senators, among others, the Senator from Louisiana [Mr. ELLENDER] and myself, and the chairman of the subcommittee, the Senator from Utah [Mr. THOMAS], who were members of the Committee on Education and Labor when the bill was favorably passed upon by the Senate in 1938. The three of us named were members of the conference committee. There is nothing inconsistent, according to my knowledge, between what was originally intended by this legislation and what has subsequently been decided by the courts and by the Wage and Hour Administrator.

What I rose to say, however, was that I have asked the Wage and Hour Administrator if he would not give us a statement in writing as to how many, according to his best judgment, would be removed from the present coverage of the act, as presently interpreted, by the amendment of my distinguished colleague. I shall have it here before the debate is concluded.

Mr. HOLLAND. I thank my colleague. A little earlier in my remarks, I made it clear we were chatting informally when he told me he anticipated that 25,000 would be affected.

Mr. PEPPER. If the Senator will allow me, the reason I rose was because in conversations subsequent to the one I had with my eminent colleague the Wage and Hour Administrator told me the number of people who would be uncovered is quite a good deal larger than the number I first had in mind when I discussed it with my colleague.

Mr. WHERRY. Mr. President, will the Senator yield for a question?

Mr. HOLLAND. I yield.

Mr. WHERRY. I ask the distinguished junior Senator from Florida what difference it makes, whether it is 20,000, 25,000, or 30,000? The purpose of the amendment is to clarify the situation so the intent of the act as it was passed in its inception will be carried out. Is not that true?

Mr. HOLLAND. That is correct. But I may add that even though it were the original intent, as I think it clearly was, at least on the part of Mr. CELLER and others, still it would not necessarily have been a sound or logical decision.

Mr. WHERRY. I agree to that.

Mr. HOLLAND. But the more I have studied the matter, the more it seems to me to have been a sound and logical conclusion, because I find no logical justification whatever for distinguishing between retail and nonretail sales upon the basis which has been laid down by the Administrator of the Wage and Hour law, a distinction which is now confronting the business people on the main streets of the Nation.

Mr. WHERRY. Mr. President, if the Senator will yield further, I may say that is the point I wanted to make. It seems to me it is sound and sensible. It is another reason why I joined with the distinguished Senator in sponsoring the amendment.

Mr. HOLLAND. I thank the Senator. I am glad to have him as a joint sponsor of the amendment.

Mr. President, the doubt arose because the Administrator and the courts, including the United States Supreme Court, ruled that the sale of goods and services for business use, as distinguished from family or household use, was not retail. I cited several cases which I shall read into the RECORD at this time, though I do not propose to weary the Senate by quoting from the cases:

Roland Electrical Co. v. *Walling* (326 U. S. 657); *Boutell* v. *Walling* (327 U. S. 463); *Martino* v. *Michigan Window Cleaning Co.* (327 U. S. 173); *McComb* v. *Deibert* ((E. Dist. Pa., 1949) 16 Labor Cases, par. 64, 982).

The Administrator's position is succinctly summarized in his 1948 annual report to Congress, page 119, in which he says:

> The basic test in determining whether a sale is a retail sale is the purpose of the buyer. A transaction in which goods are bought for personal use by a private consumer is a retail sale; the sale of goods for resale or other business use or, in general, for use by any purchaser other than the private consumer is a nonretail transaction.

This ruling of the courts and the Administrator was completely novel and theretofore unheard of in any of the retail trades. The ruling meant that the following sales would not be retail:

> By a farm implement dealer to farmers for business purposes rather than for personal use; by an automobile dealer of trucks for business use; by a hardware store to business customers; by a coal dealer to apartment houses; and by a dry goods store, a paint store, a furniture store, a stationer, a lumber dealer, and many of the other countless retailers in the Nation to business customers. (Supplemental Views of Senators TAFT and DONNELL in S. Rept. No. 640, 81st Cong. 1st sess., the Senate Labor Committee Report on S. 653, p. 9.)

These rulings, and the few decisions which have been based upon them, together with the more strained rulings which have resulted from those decisions, have brought about the present situation which I think compels the Congress to pass clarifying legislation.

Mr. President, I advert to the Roland Electrical Co. case which was mentioned this morning, and which is mentioned in

the letter of the Administrator in which he puts the laundry people upon their guard as to their being outside the exemptions of the Wages and Hours Act.

In addition to the opinion of the United States Supreme Court in the Roland Electrical Co. case, it seems to me the administrator went about as far afield as it is possible to go in adapting a decision which was addressed to one set of facts and to one sort of situation to a completely different one. In that case the business involved was that of furnishing machinery and repairing and keeping up electrical machinery for a manufacturing enterprise, which involved services which, by their very nature, are not to be rendered to every Tom, Dick, and Harry, but which are available only to and used only by large manufacturers with large investments in factories containing large amounts of electrical equipment.

From the dicta and the references in that decision, the administrator backs off and takes a new start, in support of the ruling of his predecessor, under which he is standing strongly upon his insistence that business sales, no matter how small they may be and no matter how they may happen, in spite of the fact that they are completely intrastate—and I invite the attention of the Senate to the fact that by no manner of means does the law extend to interstate business—are not within the purview of exemption under the act, and, drawing his conclusion from that case, he gives applicability to business which never could have been considered as within the purview of retail business. The Administrator then issues his new regulations and has made every little laundry and many other businesses in the United States fearful as to just where they stand.

Mr. PEPPER. Mr. President, will my colleague yield?

Mr. HOLLAND. I yield.

Mr. PEPPER. I rose only to invite my distinguished colleague's attention to the statement he just made, that if a sale is made to a business purchaser, the quantity or the size of the sale is not important. If my colleague intended to say that, I respectfully submit that I do not so understand the rules and regulations of the Wage and Hour Administrator. I am basing my statement upon the Fair Labor Standards Act of 1938, and the 1948 annual report, from page 119 of which the Senator just quoted. I invite especial attention to the next to the last paragraph of page 119, where the following language occurs:

> Under this test a sale to a business or other nonprivate purchaser is considered a retail sale unless it is made in quantity materially in excess of the quantity usually purchased by a private purchaser, and, except for lumber and building materials, at a price lower than that paid by a private purchaser. The use of this test makes it unnecessary to require the keeping of records not ordinarily maintained by establishments making many over-the-counter sales to customers who buy in small quantities, pay cash, and do not normally disclose the purpose of their purchase. While the price test has not contributed significantly to effective application of this provision of the act, the quantity test is a reasonable and practical guide and has proved valuable in enforcement.

So I suggest that it is my understanding that even if the purchaser is a business purchaser, nevertheless, if the quantity purchased is merely such as would ordinarily be purchased by a consumer, the sale is not counted as other than a retail sale.

Mr. HOLLAND. Of course the purpose of the entire fight made against the amendment, as I understand, is the unwillingness of the Administrator to accept the conclusion that business sales are in many instances, in fact, in most instances, in the average small business in our towns and cities, retail sales and are so regarded by those who make them and by those who make the purchases. The purpose of the amendment is to make that perfectly clear, so that no administrator, whether the present one, or his successors, may depart from that rule.

I may say to the Senate that one of the things which have made for trouble in this matter has been the vacillation and the change in regulations and in attitude from time to time, which we think can be corrected only by making clear what is meant by a retail sale, retail establishments, and service establishments.

Mr. PEPPER. Mr. President, will my colleague yield once more?

Mr. HOLLAND. Gladly.

Mr. PEPPER. Is it not a fact that under the amendment offered by my distinguished colleague and his associates a so-called retail establishment could sell to purchasers in any quantity whatever without losing its retail character?

Mr. HOLLAND. No. If sales were made in sufficient quantity so there would be a discount and they would be regarded not as retail sales, but as wholesale sales, they would lose their exemption. That is perfectly clear from the amendment, and it is perfectly clear from all the discussion of the subject before the committee and on the floor of the Senate. There are many people in business, as, for instance, automobile dealers, who, in the very nature of things do not sell small articles, but sell by the unit, and who would sell a truck to an individual purchaser just as they would sell one to any business enterprise, one at a time, at the same price. Yet under the rulings of the Administrator, as upheld by one of the courts, those who are selling trucks are not making a sale which can be regarded as retail, because the truck is to be used in business. Therefore, under the test and standard imposed, such a sale can never be regarded as a retail sale. In other words, the distinction is made that the same salesman selling a Cadillac car to a person for his use by himself and his family is regarded as having made a retail sale, whereas in selling a Ford truck to someone who is going to use the truck for business purposes, as trucks have to be used, he is regarded as not having made a retail sale. The unfortunate businessman who is in the truck business solely, or a large part of whose sales are sales of trucks, is deprived of the exemption, and is in a terrible fix, whereas his neighbor across the street, who may be selling a much more expensive article, is exempted because his article is sold in the form of passenger cars to family users thereof.

Mr. PEPPER. Mr. President, will my colleague yield?

Mr. HOLLAND. I yield.

Mr. PEPPER. I again call attention to the fact that I do not so understand the regulations of the Wage-Hour Administrator. It is my understanding that if the article purchased by the business user is the kind of an article generally that is bought in only such quantity as an ordinary consumer would require, the sale would not be regarded as other than a retail sale. For example, take the truck case my colleague cited. I have talked to the representative of the Wage-Hour Division a good many times about this matter, and it is my understanding that if the sale to a business user of a truck is of the same general kind of truck that a farmer or an individual user would buy, for example, a pick-up truck, the fact that the business purchaser happened to buy the truck makes no difference, but if it is a 5-ton truck, or a 10-ton truck, the kind of truck which no individual user for consumption purposes would ordinarily acquire, but is adopted only for the kind of business use for which a truck is ordinarily used, that would not be accounted as a retail sale, but would be accounted as a nonretail sale. If an automobile dealer sold a Cadillac passenger car to a business user, it would be considered a retail sale, but if he sold a fleet of Cadillac cars to one who was operating a taxicab company, or a commercial venture, that would not be regarded as a retail sale.

Mr. HOLLAND. Mr. President, in reply to my distinguished colleague, I will say that in the ruling of the court in the case of McComb against Deibert, in the eastern district of Pennsylvania, and now, as I understand, on appeal before the United States Court of Appeals for the Third Circuit, the court departed entirely from the principle announced by my colleague, and I shall, if I may, read from that decision a couple of paragraphs.

While that case turned on only one type of retailer, namely, an automobile dealer, it exemplifies graphically the error of the position taken by the courts and the Administrator. I call the attention of my colleague to the fact that in that case the court in effect held that no sale of a truck can be retail, because a truck is always sold for business purposes rather than for personal, family, or household use. Even though the court denied the exemption, it found—and I quote from the decision of the learned judge:

> It is a well-recognized concept in the automotive-trade industry that sales of trucks in nonfleet quantities to persons for business or commercial use and not for resale purposes have always been regarded as retail; sales of trucks for resale or in fleet quantities are not considered retail.
>
> The industry has never drawn any distinction between the sale of passenger cars and the sale of trucks with respect to the question of whether the transaction is retail or not. In both cases, the transaction is regarded as retail so long as the sale is to the ultimate purchaser in nonfleet quantities. No distinction is drawn from the fact

that the truck is sold for business or commercial purposes while the passenger car is, in the main, sold for personal or family use. The same holds true for passenger-car parts and truck parts.

Mr. President, those two paragraphs are quoted from the decision of the learned judge in the trial court in the case of McComb against Deibert.

Mr. PEPPER. Mr. President, will my colleague yield?

Mr. HOLLAND. I yield.

Mr. PEPPER. Does the Senator have before him anything to indicate the nature of the truck which was actually involved in that case?

Mr. HOLLAND. I have the entire decision, if my colleague would like to read it.

Mr. PEPPER. I call attention to that because I have been informed that it is pertinent to observe that the truck in that case was a distinctive kind of truck, built only for a business purpose, not the kind of a truck which would be purchased ordinarily by one expecting to use it for his personal use.

Mr. HOLLAND. In reply, I call to the attention of my distinguished colleague the fact that the paragraphs quoted included no such reference at all, but instead state a general rule and state a general finding and holding of the learned judge in that case. It seems to me that it goes even further than that in the last sentence, which I read, namely:

The same holds true for passenger-car parts and truck parts.

Under the ruling, a distinction is made as between parts going into a passenger car and put on in a garage, the sale of which parts is held to be a retail sale, and parts for a Ford truck put on in the same garage by the same workmen. The latter is held to be a business sale and not a retail sale, and is not in the exempt classification.

Mr. President, this is a complicated subject matter, and the junior Senator from Florida makes no pretense to having grasped all its elements, but he has grasped sufficient to be very sure of his ground that most of the small-business people of the Nation are terribly apprehensive about the present situation which obtains, and that some of those who participated in drafting the original law are perfectly clear in their statement that the purpose of the original law has been departed from and stultified by the regulations which have been issued or the interpretative rulings and the opinions of the courts which have been based thereon.

Mr. President, it is readily apparent that to hold that a sale for business use is not a retail sale would defeat the exemption for a vast number of establishments.

I call attention again to the fact that the Administrator, acknowledging his trouble, is recommending legislation on the part of Congress, and says it should be passed in order that the situation may be clarified. The only substantial difference between the Administrator and his recommendation and the amendment which we propose is that we propose to do away with this artificial distinction between a retail sale on the one hand and a business sale on the other, which, regardless of the size, and regardless of the fact that it is intrastate, can never be held to be a retail sale under the regulations or under the interpretative rulings of the Administrator.

The Administrator himself has acknowledged that most establishments in rural communities would lose the exemption under a literal application of the Supreme Court's interpretations.

I shall not quote in too great detail from the Administrator's report, but it is as clear as can be from his report that he is now put to it to find a way by which he can exempt the operations of little stores in country towns, the stores, garages, and filling stations which serve farmers. He calls attention in his report and in his recommendations to the fact that if the regulations and interpretative rulings are strictly carried out, and if the rulings of the court are strictly followed, it is hard to find any merchant in the country who is exempt. How far afield that is from the original purpose of the act, because it certainly was in the minds of the framers of the act that they were bringing about freedom from Federal restriction, that people were to be freed under the provisions of the act. Nothing could be clearer from a reading of the debates at the time the law was passed.

I quote exactly the words used by the Administrator in his report on this subject, because I think they show what trouble he is in. I call these words to the attention of my distinguished colleague:

In hundreds or even thousands of towns a position that the sale of goods used by a farmer in connection with his farming activity is counted against the 25 percent nonretail tolerance would be tantamount to saying that there are no exempt retail establishments in these rural communities.

If the Congress wishes to adopt this view, it should be clearly stated in the statute. The Administrator does not believe it was intended.

What does he say then? He says that the interpretative ruling, backed up by some decisions and the obiter dicta in those decisions, have gone so far that, if technically read and technically applied, it would be hard to find any country merchant who is exempt from the provisions of the Wage and Hour Act, and he ends with the statement I last read:

If the Congress wishes to adopt this view, it should be clearly stated in the statute. The Administrator does not believe it was intended.

So, in spite of the fact that a clear case is made for that sort of interpretation, he has found a way, by interpretative ruling that clearly runs in the face—and I say this advisedly—of the decisions and of his interpretation of the law in other fields. I say, he has found a way to issue a ruling that, insofar as country merchants are concerned, they are not to be included; but he calls the attention of the Congress to the fact that if the present law, as now interpreted in other fields and by the courts, is technically enforced, there are no exemptions for country merchants. He says that if Congress wants to leave that kind of situation it had better spell it out clearly in the law, because he does not believe that is what was intended.

Mr. President, that is the situation with which we are dealing. It seems to me to be clear that at this time, when Congress is considering making greater this threat against so many hundreds of thousands of our fellow citizens who are merchants and the heads of service establishments, by increasing the minimum wage rate, it certainly is the duty of Congress to clarify the situation so that this great mass of merchants and suppliers of service, who were never intended to be covered by this law, may know with assurance that they will be free from the hazard of having to pay heavy damages for something they did back yonder, and of having to have their records examined and suits brought against them in matters concerning which they thought they were clear, but which subsequent developments proved they were not.

Mr. President, it is readily apparent that to hold that a sale for business use is not a retail sale would defeat the exemption for a vast number of establishments. The Administrator himself has acknowledged that most establishments in rural communities would lose the exemption under a liberal application of the Supreme Court's interpretation. I have already read to the Senate the wording of his recommendation on that point.

The historical background of the exemption, which I have previously reviewed, shows that there was no basis at all for any legalistic distinction between those retailers selling to customers purchasing for household or family use and those purchasing for business use. No rational distinction can be drawn between establishments selling to business customers and those selling to household users, for purposes of the exemption, because, first, generally the same establishment will sell to both types of users; and, second, even where one establishment is selling to business users exclusively and another to household users only, both are local businesses and would have equal difficulty in conforming to national wage and hour standards, both are located in the same community, and both draw employees from the same labor pool and have similar working conditions.

PROCEEDINGS IN THE PRESENT CONGRESS TO CLARIFY RETAIL AND SERVICE ESTABLISHMENT EXEMPTION

Mr. President, I am not a member of the Senate Labor Committee, but I have been advised both by members of the committee and counsel that the hearings in both the House and Senate on amendments to the Fair Labor Standards Act at this session of Congress and in former sessions are replete with testimony of retailers and the service industries beseeching Congress to clarify the exemption. It is conclusively shown by such testimony that there is no sound reason to distinguish between an establishment making sales to customers for personal use and an establishment making sales to customers for business use in determining whether or not the establishment

is retail. This testimony was never denied.

In response to the unanimous request by the retail and service trades for clarification of the exemption, the House in the bill which it passed on August 11, 1949—H. R. 5856—clarified the exemption by stating precisely the conditions under which the retail and service establishment exemption shall apply. This amendment adopted by the House is identical with the one we are now offering.

On August 10, 1949, in the course of the debates on the amendment in the House, Representative CELLER, who, as I have said, was the author of the present exemption in the law, spoke in support of the amendment passed by the House. I have already read into the RECORD the remarks made by Representative CELLER at that time. He stated it was a proper clarification and that the House should accept it. He referred to the court decisions holding that an establishment was not within the exemption if it was engaged in making sales to meet commercial or business needs, and pointed out the need for overruling such decisions.

SUPPLEMENTAL VIEWS OF SENATORS TAFT AND DONNELL IN REPORT OF SENATE LABOR COMMITTEE ON S. 653 (S. REPT. 640, 81ST CONG., 1ST SESS.)

Mr. President, I desire now to come a little closer to the Senate itself. In the report of the Committee on Labor and Public Welfare on the bill now before the Senate, S. 653, the Senator from Ohio [Mr. TAFT] and the Senator from Missouri [Mr. DONNELL] filed supplemental views expressing the urgent need for clarification of the retail and service establishment exemption. After reviewing briefly the legislative history of the present exemption in the law, they made the following statement:

The opinion of the Supreme Court of the United States in *Roland Electrical Co.* v. *Walling, Administrator* (326 U. S. 657), gave rise to the view that many, perhaps most, of the establishments which had previously been commonly recognized as retail are not embraced within the exemption so written into the law (S. Rept. 640, p. 9).

Mr. President, in order that the RECORD may contain the statement respecting exemption contained in the supplemental views of the Senator from Ohio and the Senator from Missouri, I ask unanimous consent at this time to incorporate those views in the RECORD.

There being no objection, the supplemental views were ordered to be printed in the RECORD, as follows:

SUPPLEMENTAL VIEWS OF MR. TAFT AND MR. DONNELL

We approve the increase in the minimum wage to 75 cents per hour for manufacturing and mining industries and for interstate transportation, transmission, and communications industries. In certain local retailing industries, however, the evidence before the committee shows that the impact of a 75-cent minimum would have the effect of substantially curtailing employment. A retail business under a growing tendency of court decisions may be found to be engaged in interstate commerce because it receives merchandise which has crossed State lines, even though the goods have come to rest within the State before the retailer handles them. We do not believe this law should regulate in this field. The wide variation in the operating practices of local distributive trades and services is in itself an argument against Federal minimum wage and maximum hour legislation covering such trades and services.

President Roosevelt, who in 1937 urged the enactment of such legislation for those "who toil in factory," added "there are many purely local pursuits and services which no Federal legislation can effectively cover" (H. Doc. 255, 75th Cong., 1st sess.). Chairman (now Mr. Justice) Black of the Senate Labor Committee stated that the legislation was not intended to fix minimum wages and maximum hours in all the varied peculiarly local business units of the Nation, because such units "can be better regulated by the laws of the communities and of the States in which the business units operate" (81 CONGRESSIONAL RECORD 7648).

A special exemption was written into section 13 (a) (2) of the law for "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce."

The opinion of the Supreme Court of the United States in *Roland Electrical Co.* v. *Walling, Administrator* (326 U. S. 657), gave rise to the view that many, perhaps most, of the establishments which had previously been commonly recognized as retail are not embraced within the exemption so written into the law. In that case the Court said: "Accordingly, in proportion as the meaning of the 'retail' is restricted to sales made in small quantities to ultimate consumers to meet personal rather than commercial and industrial uses of those articles, so it is correspondingly appropriate to restrict the word 'service' to services to ultimate users of them for personal rather than commercial purposes."

Enforcement by the Administrator of a rule that there are exempt only such sales or services as are "to ultimate consumers to meet personal rather than commercial and industrial uses" would result in the following sales not being retail: by a farm implement dealer to farmers for business purposes rather than for personal use; by an automobile dealer of trucks for business use; by a hardware store to business customers; by a coal dealer to apartment houses; and by a dry goods store, a paint store, a furniture store, a stationer, a lumber dealer, and many of the other countless retailers in the Nation to business customers. Enforcement of this rule would cause numerous retail service establishments such as gasoline service stations and garages not to be exempt. It should, notwithstanding the foregoing, be pointed out that in the case of the farm implement dealers the Administrator has not applied the minimum wage and maximum hour requirements. We think there is strong reason in support of the view that a sale of goods or services to a customer may be a retail sale even though the customer is a business user rather than a personal or household user.

In *McComb* v. *Deibert* (E. D. Pa., 1949) (16 Labor Cases 64,982), the Administrator successfully contended that an automobile dealer's establishment, selling trucks to retail dairies, farmers, and other local customers was, because the trucks were sold for business purposes rather than for personal family or household use, not exempt.

There is no sound basis to distinguish, in determining whether or not a sale is retail, between sales to customers for personal use and sales to customers for business use. Accordingly, it is our view that concurrently with any increase in the minimum wage, section 13 (a) (2) of the law should be amended to remove such distinction.

Mr. HOLLAND. I come now, Mr. President, to the proposed amendment. It will be observed that in the amendment which we have offered there are two numbered paragraphs. These are numbered 2 and 3, both to become a part of section 13 (a) of the present law. Paragraph 2 provides generally an exemption for retail and service establishments; paragraph 3 provides specifically an exemption for certain types of laundries and dry-cleaning establishments.

I shall first discuss briefly paragraph (2) of the amendment. Under paragraph (2) the retail and service establishment exemption will apply only if three separate tests are met. First, more than 50 percent of the sales by dollar volume of goods or services must be made in the State in which the establishment is located.

Mr. DOUGLAS. Mr. President, will the Senator yield for a question?

Mr. HOLLAND. I yield.

Mr. DOUGLAS. That is the condition which prevails now, is it not?

Mr. HOLLAND. It is not so admitted in some of the regulations and by some of the decisions. I agree with the Senator that that is precisely the condition that should prevail.

I read again:

No employer now engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce is exempted—

The amendment spells it out in dollar value. It says:

more than 50 percent of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located.

So it cannot be based upon any other basis than the dollar value of more than 50 percent thereof.

Mr. DOUGLAS. I hope the Senator will forgive me for asking these questions as the Senator goes along. I do not do so for the purpose of making the going of the Senator from Florida more difficult but merely to bring out the facts as he presents them.

Mr. HOLLAND. I appreciate the remarks of the Senator from Illinois, and I welcome any questions he may ask. They are constructive, and I shall do my best to answer them.

As I said, paragraph (2) relates to—

any retail or service establishment, more than 50 percent of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located.

Mr. PEPPER. Mr. President, will my colleague yield?

The PRESIDING OFFICER (Mr. HILL in the chair). Does the Senator from Florida yield to his colleague?

Mr. HOLLAND. I yield.

Mr. PEPPER. I should like to ask a question. Let me predicate it with this statement: One of the fears which those of us who have opposed the Senator's amendment have had is that the more we enlarge the category of the retail establishments the more we enable retail establishments of that character to sell across State lines without any of their employees being protected by the act. The present law does allow as much as 50 percent—or 49 percent, to make it clear—of the goods of an establishment which is admittedly a retail establishment to be sold across State lines. Would

the able Senator be willing to modify his amendment, in lines 5 and 6 on page 1, in the language "more than 50 percent of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located," so as to say "more than 90 percent," and use the same figure in line 6 on page 2 of his amendment, so as to make it clear that at least 90 percent of the business of these service establishments and retailers which my distinguished colleague is solicitous to protect shall surely be done within the State? If the Senator is willing to accept that modification of his amendment, on behalf of the committee I am willing to accept his amendment.

Mr. HOLLAND. I appreciate the suggestion of my colleague; but it seems to me that to raise the present figure of the law from the greater part, which is certainly more than 50 percent to 90 percent, would mean that the number of organizations to which the exemption was extended would be largely decreased, and that instead of helping the very people we are trying to help, we would instead be giving them a stone when they are crying for bread. I certainly would not accept the suggestion.

The second of the tests is that 75 percent of such sales of goods or services must be to ultimate consumers, and not for resale. In that regard, as I understand, there is little departure from the present regulations, which, however, are subject to change and are not based upon anything in the law, but were taken out of thin air by the Administrator as he went along in the performance of his duties.

Third, 75 percent of such sales must be recognized in the particular industry as retail sales or services. I wish to discuss those three tests separately. I shall be very happy to reply to any questions on any of the three tests when I complete the discussion of each particular test, but I respectfully request my colleagues to let me finish the discussion of a particular test; then if there are any questions I shall be happy to endeavor to answer them.

Under the first test, a retail or service establishment is exempt so long as more than 50 percent of the annual dollar volume of the establishment's sales are made within the State in which the establishment is located. This language is merely substituted for the language "the greater part of whose selling or servicing is in intrastate commerce," found in the present law, thus resolving the confusion and ambiguities which such language has created.

I see no possible sound ground upon which anyone could object to the restatement in a clearer way of this particular provision of the present law. I refer Senators to the Administrator's annual report to Congress for 1948, pages 120 to 122.

As the present language in the law has been construed, there is serious question as to whether an establishment is selling or servicing in intrastate commerce when it sells to or renders services for customers within the State who are themselves engaged in interstate commerce, or in producing goods for interstate commerce—such as a farm implement dealer selling to farmers, who produce goods for interstate commerce. In other words, while we have every reason to believe that in the first instance it was meant that this exemption should be extended to a merchant who sold more than 50 percent of his goods within the State, we are going to make it clear. We are not going to leave a question as to whether a small retail sale within the State might be deprived of its intrastate character solely by reason of the fact that the sale is made to someone who incidentally is in interstate business. I see no reason why anyone could find fault with this attempt at clarification, which does not depart from the original intention. It certainly does bring clarification where there is nothing but cloudiness now.

As an instance of the confusion which arises because of the wording of the present law, I refer to the cases of *Kirschbaum* v. *Walling* (316 U. S. 517, 526) and *Boutell* v. *Walling* (327 U. S. 463, 467).

Moreover, there is grave question as to whether an establishment is selling in intrastate commerce where it sells goods received from outside the State to customers within the State from whom it had prior orders for such goods, or even where, without prior orders, it sells fast-moving merchandise so received from outside the State to regular customers within the State.

I am not raising this question. It is raised by the Administrator in his report. He says that it is a confusing situation, which ought to be clarified. Both these points which we have last made are found in the report and recommendations of the Administrator. How anyone could find fault with the effort to carry out recommendations which have been found to be necessary to clarify a a situation and which we know comply with the original intention, we fail to see. I refer also to the case of *Walling* v. *Jacksonville Paper Co.* (317 U. S. 564).

These questions would be resolved by making it plain in the law that a retail or service establishment is exempt so long as more than 50 percent of its annual dollar volume of sales is made within the State within which it is located. Thus such establishment would be exempt, regardless of the fact that the sales of the goods or services within the State were (a) made pursuant to prior orders from customers; (b) contemplated the purchase of goods from outside the State to fulfill customers' orders; or (c) were made to buyers engaged in interstate commerce, or in the production of goods for interstate commerce—and particularly farmers, who, of course, do produce goods for interstate commerce.

That completes my discussion of the first test, and I pass to the second.

The second test provides that in order for an establishment to be exempt, at least 75 percent of its sales must not be for resale. In other words, at least three-quarters of the goods or services sold must be to the ultimate consumer. It is my understanding that this couples in well with the present interpretation, and on that point if there is objection from anyone I shall be very glad to hear it. That is at least my clear understanding of the present administrative ruling on the question.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. DOUGLAS. I should like to ask the Senator from Florida what his judgment would be of the effect of his amendment upon the following case: Assume the case of a lumberyard which sells large quantities of lumber to a building contractor, who then uses the lumber to erect 100 houses. Is that a sale to a consumer, or is it a sale for ultimate resale? Would that be included under the minimum-wage law, according to the Senator's amendment, or would it be excluded?

Mr. HOLLAND. I will say to the Senator that under my understanding of the amendment, such a sale would be regarded as a sale for resale, and that it would require additional action clearly to exempt that sort of sale from the provisions of the minimum-wage law. I understand that such an additional amendment has been prepared by the distinguished senior Senator from Georgia [Mr. GEORGE], and will be offered. It was not the intention of the junior Senator from Florida and those associated with him to attempt to cover everything, but simply to confine ourselves to the clarification of the cloud of confusion which has arisen out of the original act. Senators will find in the amendment, I think, nothing which relates to manufacturers, even though they sell their own goods, and nothing which relates to the question which the Senator mentions. Of course, it would be a legal sale, but it would have to be comprehended within the 25 percent, rather than the 75 percent, under the amendment offered by the Senator from Florida and others.

Mr. DOUGLAS. Mr. President, I am sure the intentions of the Senator from Florida were excellent. But is it not true that if we were to introduce into the law the phrase "resale" there would be many dealers who would say that "resale" would not occur unless the specific commodity were later resold to another person, whereas in the case I cited the lumber is not resold, but is put into a building and a charge is made for the erection of the building?

Despite the legislative interpretation the Senator from Florida has given, I am very much afraid that such a sale would be exempt. It would not be considered wholesale, but would be considered retail, and therefore the amendment would operate to place outside the law a transaction which otherwise would be regarded as coming under the law.

Mr. HOLLAND. Mr. President, it is my understanding that the Senator from Vermont [Mr. FLANDERS] has an amendment dealing with the specific subject of resale. The Senator from Georgia [Mr. GEORGE] has an amendment dealing with other subjects akin thereto. Those amendments, when placed together, will provide a larger coverage than will be provided by the amendment we are now discussing.

The amendment we are now discussing has to do with the great multitude of

small-business men, the retailers and service establishments, who beyond any question whatsoever we intended to be exempted. But in many cases they have been deprived of their exemption, and in other cases they have become apprehensive as to whether they will be deprived of their exemption by the strained construction placed by the courts, as stated in the report of the Wage and Hour Administrator, who bases his recommendation upon those court rulings.

Mr. DOUGLAS. As I understand the law and the interpretations which have been given to it, a sale of lumber to a householder who wishes to erect his own house is a sale at retail, and, if made within a State, is exempt; and a sale of lumber in small quantity to a contractor, even though the contractor subsequently uses the lumber to erect a house, is regarded as a sale at retail. But I understand that a sale of lumber in large quantities to a contractor who uses it for construction purposes is considered a sale at wholesale.

I am very much afraid that the exemption the Senator proposes—the exemption of "resale" transactions—would permit concerns or merchants who really are selling to large contractors to gain exemption from the law. That would be true not only in the case of lumber, but also in the case of paint, agricultural implements, coal, and automobiles.

I should also like to ask the Senator from Florida the meaning of the phrase:

> And is recognized as retail sales or service in the particular industry.

Who is to define that?

Mr. HOLLAND. Who but the Administrator? If the administrative or interpretative ruling is not regarded as sound by the individual person concerned, then he can appeal; and then the matter will be ruled on by the courts.

Mr. DOUGLAS. I understand that the interpretation which would be made would be that given to "retail sale" by a trade association.

Mr. HOLLAND. That is one criterion, of course; but I do not believe the Senator from Illinois, and certainly not the Senator from Florida, would wish to delegate full authority in the matter to a trade association or any other interested group.

Mr. DOUGLAS. Its interpretation would be very persuasive, would it not, even if not controlling?

Mr. HOLLAND. Yes; it would be quite persuasive.

Mr. DOUGLAS. Are sales of less than a carload regarded as retail sales in the coal industry?

Mr. HOLLAND. I understand that is the case.

Mr. DOUGLAS. So a sale of nine-tenths of a carload of coal would be regarded as a retail sale, although by no stretch of the imagination would an ordinary individual household consumer burn nine-tenths of a carload of coal in the course of a winter. If nine-tenths of a carload of coal is purchased, it obviously is purchased for the purpose of being resold, or if purchased by a hotel or a manufacturing concern, then, in effect, the sale is a wholesale one, even though it is classified by the trade association as retail.

Mr. HOLLAND. I am afraid the Senator from Illinois has brought me into a field where I have very little information, never having even bought a hod of coal, in Florida.

Mr. DOUGLAS. The Senator should visit us in Illinois, because we have had a great deal of occasion to use coal.

Mr. HOLLAND. I thank the Senator. I think the coal dealers are one group who feel that their exemption has largely been taken away from them by the present regulations. I have not talked to them about the matter, and I have no great amount of information regarding it.

Mr. DOUGLAS. I am afraid this definition would open up a very wide avenue for increase. Since those "in the particular industry" would have a large part in framing the definition, they would naturally try in a very human sort of way to give it the meaning most favorable to themselves.

Mr. PEPPER. Mr. President, will my colleague yield?

Mr. HOLLAND. I yield.

Mr. PEPPER. Supplementing what the Senator has said, I understand that the coal dealers claim the right to sell up to a carload of coal and still to have the sale regarded as a retail sale. I understand that a carload of coal is approximately 100 tons of coal. The Wage and Hour Administrator has not regarded a sale of 100 tons of coal as a retail sale. Yet the coal dealers insist that up to 100 tons of coal shall still be regarded as a retail sale. I know of nothing in the pending amendment which would not permit that.

Mr. HOLLAND. I call the attention of both my able interlocutors to the last statement I made on this particular subject, when I said:

> The second of the tests is that 75 percent of such sales of goods or services must be to the ultimate consumers, and not for resale.

Of course, that statement is a part of the legislative history and record, since we are offering this amendment and are sponsoring it.

Mr. PEPPER. Would my colleague call an apartment house or hotel an ultimate consumer?

Mr. HOLLAND. I certainly would.

Mr. PEPPER. That is the point. A sale of 100 tons of coal to an apartment house or hotel would not be considered a retail sale. Under the Senator's amendment it would be regarded as a retail sale because the apartment house or hotel would be burning the coal. But under the present administration it would not be regarded as a retail sale, because the quantity is vastly larger than the quantity which ordinarily would be purchased by an individual consumer as a consumer.

Mr. HOLLAND. Mr. President, I find it impossible to distinguish between sales in small volume—which are recognized in an industry as retail—and sales to a local hotel or local laundry or to a local business building or city hall or courthouse or any other business place, when the sale is a part of the normal, everyday retail business, assuming that the sale is not made in such quantity that discounts are allowed. Of course if it is, it comes in the category of wholesale sales.

It seems to us that it is completely fanciful to attempt to distinguish between retail sales and nonretail sales on the simple basis of what will be the use to which the commodity purchased will be put. I think that is a completely false standard and criterion.

Mr. DOUGLAS. Mr. President, will the Senator yield for a further question?

Mr. HOLLAND. I yield.

Mr. DOUGLAS. Is it not true that at this time a contractor who purchases materials in small quantities is not regarded as a wholesale purchaser; but he is regarded as a wholesale purchaser only when he makes mass purchases which clearly he will not use himself, or which clearly are not on a small scale, but are for some large construction job or a large painting job, or, in the case of coal in large quantities to a commercial establishment, and so forth? It is only then that the purchase is regarded as a wholesale transaction.

So I think the present law is far more generous on that point than the Senator from Florida has, perhaps unintentionally, implied.

Mr. HOLLAND. Mr. President, there is not the slightest intention on the part of any sponsor of this amendment to bring wholesale sales within the purview of retail sales; and there is nothing in this amendment which for a moment would permit that to be done.

To the contrary, one of the standards laid down is that, in order to be regarded as a retail transaction, it must be regarded as retail in the very industry or business in which the sale is made.

Mr. DOUGLAS. I hope the Senator will not think I am unduly questioning him, but I would appreciate it very much if he would say how a wholesale transaction would be defined under the definition or distinction he is making.

Mr. HOLLAND. A wholesale transaction would be one in such quantities as to be beyond the industry's standard for retail sales and when the purchases are made in such quantities as to entitle the purchaser to discounts such as are allowed in wholesale transactions. I think the same standard would apply to any type of commodity sold.

In every industry there is a complete distinction between retail selling and wholesale selling. If there are cloudy or obscure or uncertain matters, it was never my thought or the thought of the Senators who join with me in offering the amendment that we would reach perfection at one jump; but we think we shall have clarified the matter and shall have alleviated the intense apprehension and shall have helped solve the great problems that countless thousands of small businessmen are encountering. They are crying out for relief. Incidentally their call for relief is supported by the Administrator in advocating relief and by the recommendation on this subject of two able Senators, members of the Senate committee; and likewise it is supported by the very clear testimony of the original author in the House of Representatives of this specific provision, who certainly should know something about

what he attempted to accomplish. Certainly he said very clearly what he intended to accomplish, as I have indicated in the presentation I have made today of the speech he delivered a few days ago in the House of Representatives.

Mr. DOUGLAS. Mr. President, will the Senator pardon me for raising just one more point?

Mr. HOLLAND. Gladly.

Mr. DOUGLAS. I am sure that is the intention of the Senator from Florida. But would not the effect of his phrasing be to substitute the definition of an interested group of parties, namely, the trade association, of what is a retail sale, for the definition given by the Administrator, who presumably at least is nonpartisan? And would it not therefore be to the interest of the trade association or purchaser to interpret retail sales as broadly as possible in order to increase their exemption from the act?

Mr. HOLLAND. The question of the distinguished Senator is a fairly long one. I shall attempt to answer it. It seems to me under the law as suggested by the amendment a clear test would be one discoverable in any industry by honest search, and that the Administrator would be given plenty of authority to discover what is the rule, what is the meaning of the term in the particular industry, and to give effect to it. If he should find a clouded situation he always has access to the courts.

I may say I favor this line of questioning by the distinguished Senator, and I think it shows up clearly, first, the necessity for clarification; secondly, the impossibility of clarifying it so as to meet every possible contingency in every possible industry. How better could the matter be left than by recognizing the dividing line between retail sales and wholesale sales in the particular industry of the thousands of industries which will be affected by this law, leaving to an able Administrator and the just courts to decide between citizens if any question arises?

I call attention in passing to the fact that the heart of the Administrator, like that of the Congress, bleeds with particular volume for the plight of the farmer. In the course of his recommendation, he pointed out that the farmer was in a bad way, and that the farming communities were in a bad way, and that there was doubt whether there was any business in the farming communities which was clearly exempt under the law and the regulations, or the interpretative rules and regulations and decisions as they now stand.

Under the third test, any sale or service to a private consumer, businessman who does not purchase to resell, or farmer will have to be treated by the Administrator and courts as a retail sale or service, so long as such sale or service is recognized in the particular industry as a retail sale or service. Thus, the sale by a farm-implement dealer of farm machinery to a farmer will be retail if the sale is regarded as retail in such industry and only in a very exceptional case would a sale of farm implements not be regarded as retail.

I may say to the Senate, the Administrator had a very difficult thing to do. Because of his compassion for the farmers, he had to distinguish between the sale of expensive farm implements, some of them costing more than the little Ford or Chevrolet truck, and the sale of the Ford or Chevrolet truck to the same farmer, in the same locality, by adjoining businesses on the same little man's street. But he did find a way, by his regulation, and because of the abundance of his sympathy for the plight of the farmer, to enter a ruling under which sales by a farm-implement dealer of farm machinery to farmers would be regarded as retail though in the case of a Ford truck it was not so.

So, too, sales by the hardware store, the coal dealer, the automobile dealer, the dry-goods store, the paint store, the furniture store, the stationer, and so forth, whether made to private householders or to business users, will be retail, so long as they are not for resale and are regarded as retail sales or services in such trades. Likewise, the services of hotels, restaurants, repair garages, filling stations, and the like, whether rendered to private householders or to business customers, will be retail, so long as they are regarded as retail services in such trades. No longer will it be possible for the Administrator to rule, as he has under the present law, that if a drug store sells drugs to a physician or hospital the sale is not retail, but if it sells drugs to a private household consumer the sale is retail; or that if an automobile dealer sells a truck to the local butcher, baker, or grocer the sale is not retail, but if he sells a passenger car to a private consumer the sale is retail. These and the many other like discriminatory interpretations of the Administrator are eliminated by the amendment. Under the amendment the courts would decide the question of what sales or services are recognized as retail in that particular industry. An employer claiming exemption would have the burden of proving to the courts that, in fact, 75 percent of his sales or services are recognized as retail in his industry.

I digress at this point long enough to remind the Senate that no additional burden or duty is placed upon the Administrator by this act, but that, to the contrary, the burden is placed upon the employer claiming exemption to show that, in fact, 75 percent of his sales or services are recognized as retail in his particular industry.

The amendment thus has the effect of confirming the exemption for the various local neighborhood businesses which it was the original purpose of the existing law to exempt. Included among such businesses are the grocery stores, the hardware stores, the clothing stores, the dry-goods stores, restaurants, hotels, theaters, stationery stores, farm-implement dealers, automobile dealers, coal dealers, paint stores, furniture stores, and lumber dealers.

Anyone opposing the proposed amendment must necessarily take the position that Congress, in granting the retail and service establishment exemption, intended to reject what is traditionally recognized as a retail sale or service in industry, and to adopt an arbitrary concept of what is retailing or servicing which has no meaning in industry.

I call particular attention to that. The Congress used the terms "retail" and "service establishment" in their customary meaning, in their customary application, as they were customarily understood in the various industries of the Nation. How anyone, now, could oppose the giving of that concept to complete reality through this amendment, I fail to see, because it would simply carry out clearly what was the intention and objective of those who offered the original act, and those who voted for it and brought it to passage.

The industry-recognition test which we have proposed is a simple one. It is one clearly understood by both the employees and the employers in the industry involved.

I wonder whether anyone could say an employee in the lumber business, or in any kind of business, in any of the country stores or places of business in the Nation, does not know the difference between a retail sale and a wholesale sale, does not know when a discount is being given, when the volume is sufficient, so as to constitute a wholesale transaction of the particular sale which is involved.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. ELLENDER. As a matter of fact, is it not true that most States have laws on the statute books defining retailers and wholesalers?

Mr. HOLLAND. That is correct. The tax gatherers are supposed to know the difference between wholesalers and retailers.

Mr. ELLENDER. Exactly.

Mr. HOLLAND. The salesman in the hardware store knows full well whether a sale he is making is a retail sale or not. The automobile salesman also knows whether a sale he is making is a retail sale or not. The same is true of employees in grocery stores, clothing stores, dry-goods stores, furniture stores, and so forth. Moreover, it should be remembered that any employer who asserts that his establishment is exempt must assume the burden of proving that at least 75 percent of his sales are recognized in his industry as retail. This is not a task which the Administrator has to assume.

Anyone claiming an exemption does it with full knowledge that the burden is upon him to establish to the sound satisfaction of the Administrator or his agents that more than 75 percent of the sales have been made at retail, and, of course, on the intrastate level in the community in which the business is located.

Almost any retail or service establishment—stationer, hardware store, automobile dealer, coal dealer, lumber dealer, and so forth—may do some selling which is not strictly regarded as retail, such as selling to purchasers who buy to resell. Consequently some tolerance of nonretail activities must be allowed if the exemption is not to be completely read out of the law. The Administrator himself has recognized the necessity for

this tolerance. The proposed amendment fixes this tolerance at 25 percent, the same tolerance presently allowed by the Administrator.

The Administrator himself has recognized the necessity for this tolerance. He restricts the tolerance to 25 percent, though the law gives him no specific authority to do so.

The proposed amendment fixes this tolerance at 25 percent.

Paragraph 3 of the proposed amendment contains a specific exemption for laundries and establishments engaged in cleaning clothing and fabrics. This exemption contains two limitations. First, over 50 percent of the establishment's annual dollar volume must be derived from the sale of services in the State in which it is located. Second, 75 percent of such volume must be derived from the sale of services to customers who are not engaged in a mining, manufacturing, transportation, or communication business.

I invite particular attention at this time to the fact that the laundries which have more than 25 percent of their business in the servicing of the Pullman Co., bus lines, or steampship lines, automatically lose their exemption. Since this question came up and since the amendment was sent out, I received a complaint from a laundry which wishes to be included in the exemption, and stated very frankly that the business involved the serving of interstate carriers, and it would like to be exempt. But there is no thought at all, under this amendment, of exempting such a business as that.

I want the Senate to know that there has been a good faith effort to extend in no jot or tittle into the field of businesses which are exempted, and it will be in interstate rather than intrastate businesses. If there is any increase of the number of businesses which will be exempted, which are, in part, in interstate commerce, which is accomplished by this amendment, we have not been able to discover it.

The first limitation means that the laundry or cleaning establishments must be primarily engaged in serving customers within its State. If it is primarily engaged in serving customers outside the State of its location, it will not be exempt.

Under the second limitation no laundry or cleaning establishment would be exempt if more than 25 percent of its business is with such customers as factories, mines, railroad companies or bus companies. Thus large laundries, whose customers consist primarily of interstate businesses, such as a laundry furnishing linen to pullman trains, will not be exempt. So also, industrial laundries or linen supply companies, more than 25 percent of whose sales are to mining, manufacturing, transportation or communication customers, will be unable to qualify for the exemption and will, as at present, remain subject to the act.

We have in our State a goodly number of laundries whose business is largely confined to the servicing of manufacturing establishments and business establishments. They cannot be exempted under the provisions of this amendment, because, if more than 25 percent of their sales and services is to mining, manufacturing, transportation, or communications customers—this has no relation to interstate business; it has to do with intrastate business—they will not be able to qualify for exemption and will remain as at present subject to the act.

On the other hand, the laundry or dry cleaner will be exempt whether it launders towels or other linen for barber or beauty shops, doctors or dentists offices, or schools, hospitals, restaurants or hotels, or for the housewife.

We come back to the same distinction under the present law, a distinction which is most artificial, a distinction between work done for families and that done for the little village barbershop, beauty shop, doctor's office, dentist's office, or for any of the other purely local establishments. There is no sound justification for differentiation between those two classes of business.

The question may be asked why laundries, dry-cleaning establishments, and linen supply houses need a special exemption and are not exempt under paragraph (2) of the proposed amendment. The answer is clear. One of the two tests laid down in paragraph (2) to qualify for the retail and service establishment exemption is that 75 percent of the establishment's sales of services must be recognized as retail services in the industry. This requirement would deprive most local laundries of the exemption. There is no clear concept in the laundry and cleaning industry of retail services. Irrespective of whether the laundry work is done for a private householder, a business customer such as a hotel, barber shop, restaurant, and so forth, or is done in large or small quantities, such work is not treated as retail, nonretail, or wholesale in the industry. To assure exemption therefore for the laundry and cleaning establishment, which is engaged in a purely local business, it is necessary to write a special exemption in the law for laundries and dry cleaners.

Laundries, dry cleaners, and linen supply houses are in need of the same relief from the Roland decision as the other retail and service establishments.

Mr. President, I should like at this time to place in the RECORD two letters from the Administrator of the wage-and-hour law which were referred to in the colloquy this morning, and which I shall not attempt to read in detail. I wish to place them in the RECORD so that it may be clearly and conclusively shown, first, that laundries are in trouble and no one knows who is exempt and who is not; second, that the Administrator, after ruling one way, abandoned that ruling and went to another kind of administration, and then, after a case was decided involving electrical machinery, and not laundries, came to a position announced by an earlier Administrator some years previously and notified the laundries that they were subject to a ruling made years ago. Can there be any question about the confusion which has prevailed in this industry?

Mr. President, I ask unanimous consent to include in the RECORD a letter addressed to L. Metcalfe Walling, Administrator, Wage and Hour Division, United States Department of Labor, from Representative Fred A. Hartley, Jr., from which I should like to read only one paragraph for the information of the Senate:

The ruling denies to some laundries the benefits of section 13 (a) 2 of the Wages and Hours Act on the tenuous argument that some of their customers are hospitals, barber shops, hotels, etc. I helped draft the act and served on the conference committee which wrote the act in its present form. I can assure you that it was the intent of the committee to exclude service establishments, including laundries, so long as the majority of business is within the State. There was no intention to draw a line between laundries based on the customers served.

I shall not read the rest of the letter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., July 1, 1942.

L. METCALFE WALLING,
Administrator, Wage and Hour Division, United States Department of Labor, Washington, D. C.

DEAR MR. WALLING: Mr. Robert Skinner, a laundry operator in my State, has called to my attention a ruling by the Wage and Hour Division which has caused great distress to members of the laundry industry.

The ruling denies to some laundries the benefits of section 13 (a) 2 of the Wages and Hours Act on the tenuous argument that some of their customers are hospitals, barber shops, hotels, etc. I helped draft the act and served on the conference committee which wrote the act in its present form. I can assure you that it was the intent of the committee to exclude service establishments, including laundries, so long as the majority of business is within the State. There was no intention to draw a line between laundries based on the customers served.

I would appreciate your courtesy in examining this matter with Mr. Skinner. I am confident that it is your desire to see that the rulings of the Division properly reflect the purposes of the act.

Very truly yours,

FRED A. HARTLEY, JR.

Mr. HOLLAND. Mr. President, the reply to Mr. Hartley's letter is a two-page letter, and I ask unanimous consent that it be incorporated in the RECORD as a part of my remarks. I shall not read the letter; Senators can see it for themselves. It says that a case was pending and that the Administrator preferred not to comment, and that he is inclined to be sympathetic with Mr. Hartley's position in the matter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITED STATES
DEPARTMENT OF LABOR,
WAGE AND HOUR DIVISION,
New York, N. Y., July 2, 1942.

Hon. FRED A. HARTLEY, JR.,
House of Representatives,
Washington, D. C.

MY DEAR CONGRESSMAN HARTLEY: I had a very pleasant conference today with Mr. R. B. Skinner, Mr. George H. Johnson, of the American Institute of Laundering, and Mr. Stanley I. Posner.

I advised them that I am sympathetic to their difficulties, and that I feel for the next 2 or 3 months, pending the decision by the

courts of litigation involving this very point, I cannot make any modification in our present interpretations. I believe that relatively little hardship will be imposed by this short delay in considering modification of the present interpretation of the law regarding laundries and service establishments which was issued by my predecessor, General Fleming.

I am very much inclined to the view that all laundries, regardless of whether they do so-called commercial work or not, were intended by the Congress to be exempt, as you definitely state, and regardless of the outcome of the litigation I am inclined at the present time to think that our interpretation should be revised in this regard. I am sure you will understand, however, that it is extremely awkward for me to take any stand during the pendency of litigation in the courts which is inconsistent with the position which has officially been taken in our brief. I am, of course, thinking only of the intrastate service establishments, as the law clearly states that even service establishments are subject if they do the greater part of their business across State lines.

I appreciate very much your bringing this matter to my attention.

With kindest personal regards, I am,

Sincerely yours,

L. METCALFE WALLING,
Administrator.

Mr. HOLLAND. Mr. President, the third letter to which I refer was dated January 6, 1947, from Mr. L. Metcalfe Walling to a Member of the House of Representatives, and I ask leave at this time to incorporate the letter in the RECORD, as a part of my remarks.

The PRESIDING OFFICER. Is there objection?

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITED STATES
DEPARTMENT OF LABOR,
WAGE AND HOUR AND
PUBLIC CONTRACTS DIVISIONS,
Washington, D. C., January 6, 1947.

Hon. W. F. NORRELL,
House of Representatives,
Washington, D. C.

DEAR CONGRESSMAN NORRELL: Reference is made to the request which your office made to Mr. Grimes, of my office, for an explanation of the applicability of the Fair Labor Standards Act to laundries.

The situation with respect to laundries under the Fair Labor Standards Act is that some laundries are subject to the act and others are not. The employees who are subject to the Fair Labor Standards Act are those who are engaged in interstate commerce and those who are engaged in any occupation necessary to the production of goods for interstate commerce. In all probability, most employees who work in laundries, particularly in cities or towns which are not close to a State line, are not subject to the Fair Labor Standards Act simply because they do not engage in interstate commerce or in the production of goods for interstate commerce.

In order to determine whether employees of a particular laundry are covered or not, the first thing to ascertain is whether the laundry engages in interstate commerce. A laundry may do a so-called wholesale business without engaging in interstate commerce. For example, in addition to servicing individuals, a laundry might also do work for hotels, barber shops, beauty parlors, and retail stores, all located in the same State where the laundry is located, and under such a factual situation the laundry would not be engaged in interstate commerce and its employees would not be subject to the act.

On the other hand, the laundry might be engaged in interstate commerce and its employees engaged in work necessary to the production of goods for interstate commerce even if all of the laundry's commercial customers are located in the same State. An example would be a laundry doing laundry work for a manufacturing establishment which produces goods to be shipped out of the State, and an immediate example would be a laundry doing work for a meat-packing plant. The employees in the laundry washing the white clothes used by the meat-packing employees would be engaged in an operation necessary to the production of the meat.

Another example would be a laundry which washes table linens or bed linens for a railroad company or a steamship company which is going to use the linens on its trains or ships in interstate commerce. I think it can be assumed that there will be very few such situations.

The Fair Labor Standards Act provides a complete exemption from both its minimum wage and overtime pay requirements for a person employed in any retail or service establishment, the greater part of whose selling or servicing is in intrastate commerce, This provision is written in the law itself and whether any particular laundry qualifies for the exemption is entirely a question of fact.

As early as 1940 my predecessor as Administrator of these divisions publicly expressed the opinion that some laundries could qualify as service establishments and others could not. Those which could qualify were stated to be the ones who restricted their customers to private individuals and householders and who limited their work to laundering and cleaning of wearing apparel and household linens. The opinion went further and explained that other types of laundries engaged in work for commercial customers such as hotels, restaurants, manufacturing establishments, and other laundries could not qualify as service establishments.

The former Administrator also stated that where the laundry could qualify as a service establishment and on some occasions did some commercial work he would not, for enforcement purposes, consider that laundry to have lost its exemption and he fixed the amount of leeway at 25 percent of the firm's business, based on dollar volume over each period of 6 months. This opinion of the earlier Administrator was given the widest possible publicity. In essence, it was a simple statement to the effect that whether a particular laundry was a kind of service establishment entitled to the exemption depended upon the type of customer the laundry served.

On June 1943 the Circuit Court of Appeals for the Sixth Circuit decided the case of *Lonas* v. *National Linen Supply Company.* This was a case in which an employee sued a laundry which was the kind the Administrator had said was not a service establishment. The Circuit Court of Appeals ruled in favor of the laundry, and said, in effect, that all laundries were service establishments regardless of the kind of customer they served.

The Supreme Court of the United States was asked to review this case, and on November 8, 1943, it refused to do so. Thereafter I issued a public statement directed particularly to the laundries, in which I said simply that I would withhold any action against laundries so long as this decision of the Circuit Court of Appeals remained effective.

On January 28, 1946, the Supreme Court of the United States decided the case of *Roland Electrical Company* v. *Walling.* Although this case did not involve a laundry, it did involve the question of what constitutes the kind of service establishment which was entitled to the exemption, and in its decision the Supreme Court overruled the earlier decision of the Circuit Court of Appeals in the Lonas case.

The laundry industry, of course, has known of this decision for almost 11 months, and a few weeks ago I issued another public statement specifically directed to the laundry industry in which I advised that industry that beginning January 15, 1947, my enforcement policy will be to apply the law to those laundries which, under the opinion expressed by the former Administrator and under the decision of the Supreme Court, are not entitled to the exemption.

Sincerely yours,

L. METCALFE WALLING,
Administrator.

Mr. HOLLAND. There are some Senators now present who were not here this morning, and I shall read a few paragraphs from the letter, as follows:

In order to determine whether employees of a particular laundry are covered or not, the first thing to ascertain is whether the laundry engages in interstate commerce. A laundry may do a so-called wholesale business without engaging in interstate commerce. For example, in addition to servicing individuals a laundry might also do work for hotels, barber shops, beauty parlors, and retail stores, all located in the same State where the laundry is located and under such a factual situation the laundry would not be engaged in interstate commerce and its employees would not be subject to the act.

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The Supreme Court of the United States was asked to review this case and on November 8, 1943, it refused to do so. Thereafter I issued a public statement directed particularly to the laundries in which I said simply that I would withhold any action against laundries so long as this decision of the circuit court of appeals remained effective.

On January 28, 1946, the Supreme Court of the United States decided the case of *Roland Electrical Company* v. *Walling.*

I pause to remind the Senate again that that had to do with manufacturing equipment in the electrical field, and with the repairing of such equipment, and not with sales of ordinary stocks in trade, which are sold to ordinary customers.

The letter continues:

Although this case did not involve a laundry, it did involve the question of what constitutes the kind of service establishment which was entitled to the exemption and in its decision the Supreme Court overruled the earlier decision of the circuit court of appeals in the Lonas case.

Mr. President, it is easy to see the kind of reasoning which was followed by the Administrator in that particular recital. He said that the ruling of the Supreme Court in the Roland case, having to do with electrical equipment, and repairs thereof, overruled the earlier decision of the circuit court of appeals in the Lonas case, which had to do with a laundry, and with an entirely different subject matter, in a completely different field.

The letter continues:

The laundry industry, of course, has known of this decision for almost 11 months and a few weeks ago I issued another public statement specifically directed to the laundry in

which I advised that industry that beginning January 15, 1947, my enforcement policy will be to apply the law to those laundries which, under the opinion expressed by the former Administrator and under the decision of the Supreme Court, are not entitled to the exemption.

In other words, to those laundries which are doing business by way of serving hotels, barber shops, beauty parlors, business buildings, public buildings, and the like.

Mr. President, those two letters show more clearly than any talk by anyone outside of the Administration could show the reason, and the justified reason, for the grave apprehension which prevails on the part of the laundry establishments throughout the Nation.

I hope that the Senate will feel, as it seems we should feel, that it is incumbent upon the Senate, at the time there is being written into the law an amendment which will make the cause for apprehension greater in that the wage will be materially increased, to write into the law an amendment which will clarify the position of each laundry, so that it may tell with crystal clarity whether or not it is exempted from the provisions of the law.

Mr. President, I have several questions which have been suggested in the discussion during the pendency of the amendment, and I shall state them in the closing part of my remarks in the form of question and answer, in the belief that it may be a helpful way to proceed.

SOME QUESTIONS CONCERNING THE PROPOSED AMENDMENT

The amendment which we have introduced has been a product of several months work and discussion. It was placed in its present form some 2 months ago and has had wide circulation. I have had numerous inquiries as to its effect upon various situations and its effect upon various court decisions. I have been asked the following questions:

Question. What effect would this amendment have upon the large mail-order houses which make retail sales?

Answer. None whatever. They are not exempt under the present law because most of their sales are made to out-of-State customers, and they would remain nonexempt for the same reason under the proposed amendment.

Question. What effect would this amendment have upon chain stores?

Answer. It leaves them in exactly the same position as they are today. Their warehouses and central offices would continue to be subject to the act. The individual branch stores, however, would continue to be exempt. This was the holding of the United States Supreme Court in *Phillips* v. *Walling* (324 U. S. 490), and there is no intent in the proposed amendment to change such holding. To the extent that any branch store of a chain has a problem in connection with its sales to business customers, the amendment would remove the problem as it does for other stores.

Question. In *Boutell* v. *Walling* (327 U. S. 463) the Supreme Court held that a repair establishment, affiliated with an interstate motor carrier and engaged exclusively in repairing the trucks of such motor carrier was not exempt as a service establishment. Would that case be decided any differently under the proposed amendment?

Answer. No; for the reason that the servicing of such a repair establishment would not be recognized as retail in the industry. This is so because such establishment is not open to the general public and is really the same as a repair department operated by the interstate motor carrier itself. A repair establishment affiliated with an interstate motor carrier is not like a garage patronized by auto and truck owners generally.

Question. In *Roland Electrical Co.* v. *Walling* (326 U. S. 657) the Supreme Court held that a company engaged in selling industrial goods and service to manufacturers engaged in the production of goods for interstate commerce and to other industrial and business customers was not a retail or service establishment. Would that case be decided any differently under the proposed amendment?

The market for the type of equipment is of course extremely limited, and there has been no contention anywhere that one supplying that type of equipment is engaged in a retail business.

Answer. Definitely not. The sale and servicing of manufacturing machinery and manufacturing equipment used in the production of goods is not regarded as retail selling or servicing in the industry which distributes or services that type of equipment.

Question. In *Kirschbaum* v. *Walling* (316 U. S. 517), the Supreme Court held that the retail and service establishment exemption did not apply to maintenance employees of a loft building occupied by firms engaged in the manufacture of goods for interstate commerce. Would that case be decided any differently under the proposed amendment?

Answer. No. The renting and maintenance of a loft building or of an office building are wholly unrelated to the concept of retail selling or servicing.

Question. Would the proposed amendment have the effect of exempting banks, insurance companies, credit companies, newspapers, telephone companies, gas and electric utility companies, telegraph companies, etc.?

Answer. No. These types of businesses are not considered exempt under the retail or service establishment exemption in the present law because the selling and servicing which they do are not generally considered to be retail. The proposed amendment would do nothing to change their nonexempt status under the retail and service establishment exemption. To the extent that Congress intended to exempt any of these businesses it created special exemptions for them. See, for example, section 13 (a) (8) (exemption for small weekly and semiweekly newspapers); section 13 (a) (9) (exemption for local trolleys and local motor bus carriers); section 13 (a) (11) (exemptions for switchboard operators of small telephone exchanges).

Question. Do quantity and price involved in a sale play any part in the proposed amendment in determining the applicability of the exemption?

Answer. Yes. Under paragraph (2) of the proposed amendment a sale is not retail unless regarded in the particular industry as such. As a general rule, sales in quantities substantially larger than those to the average buyer and at a substantial discount are regarded as wholesale and not as retail.

Question. Do many retail and service establishments engage in some wholesale or nonretail transactions?

Answer. Yes. The Administrator recognizes this under his present interpretations which permit a retail or service establishment to devote 25 percent of its business to wholesale or nonretail selling or servicing without losing the exemption.

Question. What tolerance or allowance for wholesale or nonretail selling or servicing is provided for in the proposed amendment?

Answer. Twenty-five percent. The same as the Administrator allows under the present law. See the Administrators 1948 Annual Report to Congress, page 119. Under paragraph (2) of the proposed amendment the 25-percent tolerance would be for transactions not recognized in the particular industry as retail selling or servicing such as sales for resale and quantity sales at a discount. As to laundries and cleaning establishments a 25-percent tolerance is provided for their sales of services to industrial customers.

Question. What type of service establishments would the proposed amendment exempt?

Answer. Generally, restaurants, hotels, repair garages, watch-repair establishments, beauty parlors, barber shops, hospitals, farm equipment repair shops, laundries, drycleaning establishments, valet shops, battery shops, refrigerator repair shops, typewriter repair shops, taxicab companies, exterminator service companies and other establishments performing local services.

Question. Is there any doubt about the application of the existing retail and service establishment exemption in the law to hotels?

Answer. Yes. Applying the philosophy of the Roland decision there is doubt whether a hotel, engaged primarily in serving commercial travelers or business customers, is exempt.

I may say in amplifying that statement in my prepared remarks, Mr. President, that I have already mentioned, during the colloquy, the fact that there are at least two other reasons why the hotel and restaurant people are most apprehensive. The first of those is the ruling of the Federal court to the effect that a restaurant which is located within or near a factory, and which primarily is serving the employees of the factory, but which is also serving the general public who come there, and at the same price, cannot be exempted, even though its business is entirely separate and it is run by persons who have no connection at all with the manufacturing business.

The other matter which is causing concern, Mr. President, is that one of the large labor organizations, I believe it is the American Federation of Labor, has made every effort to have the hotel industry included within the purview of the National Labor Relations Board jurisdiction, and I think it is also generally known that there is difference of opinion between the learned counsel for the Board, Mr. Denham, and at least a majority of the Board as to whether hotel labor is subject to the jurisdiction of that Board.

Mr. President, the pendency of these two matters which I have mentioned, plus the uncertain effect of the Roland decision, have presented such a situation to the hotel people and the restaurant people that they do have apprehension and they have every justification for being anxious as to what their status is, and for asking that their status be clarified as this act is being amended.

Question. Have the courts ever held that a hotel or restaurant was not entitled to the exemption?

Answer. Yes. It has been held that a restaurant located in a factory, operating as an independent establishment and wholly unconnected in ownership and management with the factory, was not entitled to the exemption, notwithstanding that the restaurant sold and served its food directly to

the employees of the factory and others of the general public. *McComb* v. *Factory Stores* (81 F. Supp. 403 (N. D. Ohio 1948)). The exemption was denied on the basis of the decision in the Roland case.

Question. What change in the exemption status of laundries and cleaners generally will be effected by the proposed amendment?

Answer. The principal change is the elimination of the retail-nonretail concept as applied to sales of laundering or cleaning services—

Which is nonexistent in their industrial parlance, and for which there is no sound precedent whatever—

and the substitution therefor of an exemption limitation based upon the volume of laundry sales to industrial-type customers. This, in turn, will mean that under the proposed amendment the exempt or nonexempt status of laundries will not be dependent upon whether, instead of being for a housewife, towels were laundered for a barber shop, sheets were laundered for a hospital, or aprons were laundered for the butcher.

Question. Will all laundries or dry cleaners be exempted from the act by the proposed amendment?

Answer. No; by no means. Only those establishments which can qualify under the two limitations of the proposed amendment will be exempted.

Question. Will our proposed amendment exempt any more employees than the present retail exemption?

The answer is "No," insofar as concerns those who are exempted under the proper meaning of the original act. The answer will be "Yes" as to some undetermined number, stated to me some weeks ago as being some 25,000, who are included in the field that has been included within the jurisdiction of this act by interpretative rulings and by the courts in following those rulings in some cases.

Answer. No. The Administrator concedes in his 1948 annual report to Congress that the Supreme Court's decisions have virtually destroyed the exemption for all retail and service establishments located in the rural communities and selling and serving farmers. He further concedes that such decisions cast considerable doubt upon the application of the exemption to any retail or service establishment, wherever located, making some sales to business users. Since practically every retail or service establishment makes some such sales, this means that the status of all retail and service establishments is doubtful under the present exemption. The amendment clears up that doubt by exempting the establishments which are traditionally regarded as retail. It is only in the sense that it clarifies such doubt that the amendment can be regarded as expanding the present exemption. But in a real sense it is not expanding the exemption at all but simply confirming it for those establishments which the Congress always intended to exempt. The contrary view must assume that in originally granting the retail and service establishment exemption, Congress intended to reject what is traditionally recognized as a retail sale or service in an industry and to adopt an arbitrary concept of what is retailing or servicing.

Mr. President, that concludes my prepared remarks. There are two additional subjects to which I wish briefly to address myself, but I yield now to my colleague [Mr. PEPPER].

Mr. PEPPER. I wonder if my colleague will be good enough to yield for the submission of a unanimous-consent request.

Mr. HOLLAND. I yield.

Mr. PEPPER. Mr. President, it is the hope of all of us that we can progress this matter as much as is proper. I wish to submit a unanimous-consent request that we vote on the pending amendment not later than 9:30 this evening, with the understanding that when the junior Senator from Florida has concluded his remarks we will seek to take a recess, to resume the session at 8 o'clock this evening. The hour and a half between 8 o'clock and 9:30 o'clock would be divided, 1 hour to the senior Senator from Florida and one-half hour to the junior Senator from Florida, with the understanding that no reply will be attempted to the remarks of the junior Senator from Florida until the resumption of the session at 8 o'clock this evening.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Florida?

Mr. SALTONSTALL. Mr. President, it is my understanding that that is agreeable to the senior Senator from Ohio [Mr. TAFT], who is interested in this subject. I understand from conversation with the senior Senator from Florida that the amendments of the Senator from Georgia [Mr. GEORGE], the amendment of the Senator from Vermont [Mr. FLANDERS], and any other amendments are not included in this agreement.

Mr. PEPPER. That is correct.

Mr. SALTONSTALL. They will come up either after the vote tonight, or at the session tomorrow.

Mr. PEPPER. That is correct.

The PRESIDING OFFICER. Is there objection?

Mr. CONNALLY. Mr. President, reserving the right to object, why should we take such a long recess for supper? It does not require an hour and 40 minutes to eat a bite of supper. We are just killing time.

Mr. PEPPER. Mr. President, it was contemplated at the time it was announced that there would be a request for a recess, that the recess would begin at 7 o'clock, with the understanding that we would resume at 8. It was contemplated that the session would continue until 7 o'clock.

Mr. CONNALLY. Why can it not continue until 7 o'clock?

Mr. PEPPER. It can continue until 7 o'clock, of course; but it was not known exactly how much longer the junior Senator from Florida would be addressing the Senate. It was thought that if we could obtain a unanimous-consent agreement to vote at 9:30 we probably would not lose very much time.

Mr. CONNALLY. We would be losing the same amount of time. Setting the time for voting at 9:30 does not make any difference in the amount of time we would lose. I have gone through with many of these agreements, and have sat around for an hour waiting for 8 o'clock to arrive. Unless one is working under the wages-and-hours law he ought to be able to finish supper in an hour.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Florida?

Mr. CONNALLY. I make the objection, unless the recess is taken at 7 o'clock.

Mr. WHERRY. Mr. President, I believe the Senator from Texas misunderstood. It was not the intention to recess until 7, or about that time. Is not that correct?

Mr. PEPPER. I had anticipated that when the junior Senator from Florida had concluded his remarks, whatever the time might be, we might take a recess until 8 o'clock. So far as I am concerned, I am perfectly willing to modify the request. I see that the majority leader is now in the Chamber. I leave the matter to his good judgment. Speaking for myself, I am perfectly willing to address the Senate when the junior Senator from Florida has concluded; but I also wish a reasonable length of time to address myself to this amendment after we resume the session following the dinner hour. The division of time suggested is agreeable to me. I will leave the division of time as it was suggested in the proposal which I made.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. SALTONSTALL. Mr. President, will the Senator from Florida yield for a question?

Mr. CONNALLY. Just a moment. I thought the Senator from Florida yielded to me.

Mr. President, I do not press the objection. If Senators want to sit around for an hour twiddling their thumbs and waiting until the hour of 8 o'clock, it is all right with me.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request proposed by the Senator from Florida?

Mr. HOLLAND. Mr. President, reserving the right to object, I can finish in 5 or 6 minutes more. We could return here at 7:30, and conclude at 9.

Mr. PEPPER. Some Senators have been notified that the session will not be resumed until 8 o'clock. So far as I am concerned, I am perfectly willing to begin my remarks on this subject when my distinguished colleague concludes. At the same time, I should like to have a reasonable time after the resumption of the session.

Mr. SALTONSTALL. Mr. President, it is my understanding that the time between now and 7 o'clock is not divided.

Mr. PEPPER. That is correct.

Mr. SALTONSTALL. So that any Senator who wishes to speak before 7 o'clock may do so.

Mr. PEPPER. Yes. We can continue until 7 o'clock.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Florida? The Chair hears none, and it is so ordered.

Mr. McKELLAR. Mr. President, will the Senator from Florida yield to me for a moment?

Mr. HOLLAND. I yield.

Mr. McKELLAR. I have an amendment which I should like to offer. It will require only a few moments. I think probably the Senator from Florida [Mr. PEPPER] will be good enough to accept it. I send the amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The pending question is the amendment offered by the junior Senator from Florida [Mr. HOLLAND]. Is there objection to temporarily laying that amendment aside for the purpose of considering an amendment to which there may be no objection?

Mr. SALTONSTALL. Mr. President, reserving the right to object, I should like to ask the senior Senator from Florida and the senior Senator from Ohio if they know what the amendment is, and if they have any objection to it being considered at this time.

Mr. PEPPER. Mr. President, both of us know about the nature of the amendment, and both of us have expressed to the able Senator from Tennessee some concern about it, and considerable doubt as to whether it would be acceptable to Members of the House of Representatives. However, we have stated that we are willing to present the matter and allow it to have fair consideration in conference.

The PRESIDING OFFICER. Does the junior Senator from Florida consent to the temporary withdrawal of his amendment for the purpose of considering the amendment of the Senator from Tennessee?

Mr. HOLLAND. I do.

The PRESIDING OFFICER. The amendment offered by the Senator from Tennessee will be stated.

The LEGISLATIVE CLERK. On page 41, in the committee amendment, before the period in line 18, it is proposed to insert a semicolon and the following: or any home worker engaged in sewing baseballs or softballs.

Mr. PEPPER. Mr. President, we are willing to take the amendment to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Tennessee [Mr. McKELLAR].

The amendment was agreed to.

Mr. McKELLAR. I thank the Senator from Florida and the Senator from Ohio.

The PRESIDING OFFICER. The amendment offered by the junior Senator from Florida [Mr. HOLLAND] is again before the Senate, and the junior Senator from Florida is recognized.

Mr. HOLLAND. Mr. President, there are two matters which I wish to place in the RECORD at this time, which I think have not been mentioned heretofore by me. One is this:

Just as the Congress recognized the fact that the subject of retail business and of service businesses was a matter which was much better within the handling of the State laws and local laws—as, indeed, is required, as I understand, under the Federal Constitution—so the States have seemed to understand the question because a great many of the States have adopted minimum-wage-and-hour provisions applicable to businesses which are intrastate.

Without attempting to encumber the RECORD by placing in the RECORD the full tabulation of provisions of State laws, which are shown in the record of the hearings at pages 369 and following, I wish to call attention to certain things appearing in that tabulation which clearly show the fact that the States have recognized retail businesses as being not subject to the hours yardstick or the overtime yardstick to the same degree as interstate business. The compilation shows that even the most progressive and forward-looking States, as they are generally regarded, have recognized the fact, first, that retail businesses are subject to State regulation; and, second, that that regulation in no way should be so extreme, so far as the hours requirement or the wage requirement is concerned, as is the regulation required in other fields.

For example, in this tabulation it appears that in the State of California, a highly progressive and very fine State, there is a law, which became effective June 1, 1947, providing for a 48-hour workweek. This is applicable to retail and service trades in that State. There is a recognition that that kind of business must operate 6 days a week in order to serve its public. There is a minimum rate of pay of 65 cents an hour for experienced workers and 50 cents an hour for inexperienced workers.

In the State of Illinois—and I am glad to see present the distinguished majority leader [Mr. LUCAS]—I note that similar action has been taken. In the case of women and minors employed in retail and service industries, a 48-hour workweek is provided, indicating that the customs and habits of the people of Illinois are not vastly different from those of the people of California or other States. This type of institution is supposed to remain open 6 days a week, and in order to serve its public it must do so. I note that the scale of pay prescribed by the State of Illinois, one of our most progressive States, is 45 cents an hour for learners or apprentices and 55 cents an hour for those who are classified as experienced salesmen or workers in this particular field.

I shall not encumber the RECORD by reading a vast number of others; but I notice that in the State of New York a 40-hour workweek is prescribed in the large cities, and a 44-hour workweek in the smaller cities, thus recognizing the habits of the people and showing that this is a subject which is peculiarly subject to local or State control. In other words, a 40-hour workweek is prescribed in the large cities; and a 44-hour workweek, with a maximum of 48 hours, is prescribed in the smaller cities, in various classifications. In the State of New York, the maximum rate is 52½ cents an hour for full-time workers in the retail trades. This list does not mention the service trades. I do not know whether they are included in it. The rate is 57½ cents an hour for part-time workers who work on rush days or who work less than the minimum of 30 hours a week, the maximum being 48 hours a week in the smaller cities and towns. I call attention to these facts in order to show clearly that in this matter the custom varies as between different communities, and to show how within a State there are differences which have been recognized in the cases I have mentioned and in many other cases, as Senators will observe if they examine the statement of the various classifications.

Now I wish to place in the RECORD the showing with reference to the State of New Hampshire, because the distinguished junior Senator from New Hampshire [Mr. TOBEY] has expressed an interest in this matter. It is interesting to note that in his State of New Hampshire—which, as he stated earlier today, is predominantly a rural State, with few exceptions—a workweek of 54 hours is allowed in trade and service industries for women and minors, both experienced and inexperienced in working in those trades and services. From that, I would judge that perhaps the New England traditional practices of thrift and of long hours of work still prevail in that section of the country. So it is interesting to note that 54 hours of work are permitted in a workweek in frugal New England, which all of us admire so greatly, whereas 48 hours is the permissible workweek in the great State of Illinois, represented by the two able and distinguished Senators who now are on the floor of the Senate, and in the great State of California—indicating that the traditional habits of the New Englanders still persist, and that the present arrangement gives a chance for the habits and customs of the people to be expressed in that way, through local legislation, which everyone knows will, in the very nature of things, more nearly suit the people and the businesses in which the people are engaged, as they are affected by such matters.

So in New Hampshire, I notice again an indication of the traditional New England frugality in the fact that the minimum wage is 35 cents an hour for inexperienced workers and 50 cents an hour for experienced workers.

Mr. President, by studying the list, I think it will clearly appear that there is a definite distinction, recognized as such by the acts of the legislatures of the various States, as between those States and as between various classes of communities in those States. For instance, I notice that one of them has three zones listed. I do not have available at this time information as to how the zones are determined.

But it is obvious that this matter is a subject for legislation which, from the very nature of things, calls for local handling and now is being handled locally in such a way as to justify the feeling, which has been expressed both on the floor of the Senate and on the floor of the House—it was expressed the other day on the floor of the House by one of the Members of the House who helped draw the original act, and it has been expressed on the floor of the House

by other Members—that here is a field which must be left to local regulation, and which cannot be measured, for instance, from the standpoint of the compensation paid to a factory worker; and that this subject is treated differently in States in which similar conditions exist. So the wisdom of local rule is amply borne out by the material I now have before me. It fully bears out the contentions made by the sponsors of the original act and by the sponsors of this amendment that this field calls for local handling and for varied handling, as conditions may require.

Mr. President, I close my remarks by reminding the Senate that this amendment is called for by a great many people representing a great many different points of view—so much so, that I should think it would be impressive to Senators to recount the varying sources from which the call comes at this time for the adoption of the amendment, and I shall do so: First, it comes from the House of Representatives, which has approved this amendment in the very words in which the amendment is proposed here. The result is, Mr. President, that if these words are written into the Senate bill, there will be no basis for a conference between the House and the Senate in these waning hours of a hectic session; but, instead, the subject matter will have been completely and finally handled, for the House of Representatives has shown clearly its feelings in this matter. The original sponsors of the bill in the House of Representatives, including Representative CELLER, have clearly shown that they approve the wording of the amendment, and that if the amendment were not adopted by the House in the words now included in the Lucas bill, one of the sponsors proposed to offer it because he believes it so clearly expresses the sentiment of the original sponsors of the act that he wishes it written into this bill.

Next, Mr. President, I call the attention of the Senate to the fact that two extremely able Members of this body have, by their separate reports in connection with the committee report, after the hearings on the bill were held, insistently recommended that this field calls for action along the lines suggested by them. That recommendation certainly fits in with the amendment. We already have been told, earlier today, by the Senator from Ohio that he approves the amendment as written and that he is asking for its adoption. So we have the endorsement and recommendation of the objectives of this amendment, as it is written, by those two distinguished Members of this body.

Next, we have an insistent recommendation from the Administrator himself of an amendment in this exact field, although not exactly this amendment. However, his recommendation is of an amendment which covers many of the objectives of this amendment. Let it be perfectly clear that I am not saying that his recommendations are identical with those of the sponsors of this amendment, but several times in the course of my remarks I have said that he recognizes the necessity for action in the precise field to which this amendment applies, and that he recognizes the necessity for the adoption of some of the provisions of this amendment, because he requests the adoption of an amendment which will follow the practice which has been laid down in the rulings he has made heretofore in this field.

Furthermore, I have pointed out that there is only one area of substantial difference between the Administrator's recommendations and the provisions of this amendment, and that difference has to do with the artificial distinction the Administrator makes between business sales of any kind and retail sales. Under his ruling, no business sale can be classified as a retail sale.

In closing, Mr. President, let me say that I have never seen demonstrated in connection with any proposed legislation with which I have been concerned such a unanimity of opinion by all the persons concerned with it.

Mr. PEPPER. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. GEORGE in the chair). Does the Senator from Florida yield to his colleague?

Mr. HOLLAND. I ask my colleague to wait just a minute, please, until I complete this summation.

Mr. President, both the small business organizations of the Nation—at least, the ones with which I am acquainted, the two organizations which generally speak for small business throughout the Nation on a national basis—have strongly urged the adoption of the amendment. I have received a telegram from Mr. Lyle W. Jones, director of the Washington office of the National Small Business Men's Association. I shall not encumber the RECORD by having the telegram printed in the RECORD at this point; but any Senator who wishes to see the telegram may certainly do so. It strongly endorses the amendment.

I have also received a similar telegram from Mr. Fred A. Virkus, chairman of the Conference of American Small Business Organizations, located at Chicago, Ill. His telegram also is available to any Member of the Senate who wishes to see it.

Various groups of retail industry have strongly requested and sponsored the amendment, including, among others—of course I cannot recount all of them; this morning I asked to have the list brought up to date, but I wish to indicate how generally the amendment is supported by persons whose businesses are affected, and who request that this amendment clarifying their status be adopted as a part of the law:

The Retail Paint and Wallpaper Distributors of America, Inc., St. Louis, Mo.

The American Retail Coal Association, Chicago, Ill.

Mr. Arthur D. Condon, representative of the Retail Merchants' National Association. I understand that is an association of chain stores. I make no apology for having such representation from a group of chain organizations, who certainly are entitled to just as fair treatment as anyone else.

The managing director of the National Retail Hardware Association, with an office at Boston, Mass. Perhaps the distinguished Senator from Massachusetts knows the managing director, Mr. Rivers Peterson, who has informed the Senator from Florida of his strong support of the amendment.

The National Automobile Dealers' Association, with an office in Washington, D. C.

The American Hotel Association.

The American Institute of Laundering.

The National Restaurant Association.

The National Retail Dry Goods Association.

There are others, and I am sorry that my list cannot be stated to be inclusive, but time did not permit making it up. I have never seen such a completely common front taken by business groups who felt first they were entitled to this relief and should have it, and, second, that they did not want to have their amendment confused with others which had to do with exempting industries which might be on the border line, in that they were partly manufacturing or that they were more in interstate commerce than was projected in the terms of the original act.

I believe my distinguished colleague was absent when I made the statement today that I had a letter from a laundry in our State asking that the amendment be reworded so as to include them, but stating frankly and with complete candor the nature of their business. The nature of their business was such that they could not be included without doing violence to the approach of the original sponsors of the bill. They were servicing the railroads, the Pullman Co., and the like. It may be my distinguished colleague had a communication from that same business.

Mr. President, we have endeavored to draw an amendment which really applies to the bona fide retail stores, and to the bona fide laundries, and to the bona fide service establishments in general. We think we have not done violence, but instead have followed meticulously the purposes of the original law, and we strongly hope and sincerely ask that the Senate approve this amendment, so as to prevent action being taken by which the degree of apprehension under which small business is suffering throughout the Nation at this time will be enhanced, as it will be enhanced by increasing the minimum wage from 40 cents to 75 cents or 87½ cents.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. DOUGLAS. I appreciate the fact that the junior Senator from Florida has been speaking for a considerable period of time, and that he is probably tired as a result of his effort. I shall try to be very brief in the questions I ask him. The Senator from Florida mentioned the fact that two members of the Committee on Labor supported the Holland amendment. I wonder whether the Senator from Florida would mention the members of the committee who are opposing the Holland amendment.

Mr. HOLLAND. I am not able to give that information. All the other members of the committee I presume are in the Senate and may be heard upon it. I have not represented that any others than the two have recommended this or

a similar amendment. There may be others who feel the same way, but I do not know. My statement does not apply to any others except the two whom I mentioned, the senior Senator from Ohio and the senior Senator from Missouri.

Mr. DOUGLAS. Since there are 13 members of the committee, and since only 2, so far as I know, have explicitly favored the Holland amendment, it would seem to me that the overwhelming weight of opinion on the committee was contrary to the amendment proposed by the Senator.

Mr. HOLLAND. I suspect that will be found to be the case. The Senators on the Democratic side of the aisle have been in an unusual and a not too easy situation in all legislation affecting labor in this session, due to the fact that all eight of our distinguished colleagues from the Democratic side who are upon this committee have apparently seen eye to eye and with complete unanimity, in the programs which were reported in the fields of labor legislation, and they have not seen it, as many of us have, who have taken a position similar to that taken by the sponsors of this amendment, so that we have been in a situation where we have had no staff members to assist us, no colleagues on our side from whom we could receive counsel, comfort, or sympathy. I am unable to say what the attitude of the members of the committee, on the other side of the aisle, other than the two whom I mentioned, and whose position was shown in the report, may be; but I taken it for granted most of them will have found opportunity to express their views on the amendment and on the legislation in general during the course of the debate.

Mr. DOUGLAS. I may say to my good friend from Florida, if he has a feeling that the interests of Senators who feel similarly to him, are not represented on the Labor Committee, that sometimes those of us who are Democrats from the North and the East have a feeling that we are not represented on certain other committees of the Senate; so that we can mutually commiserate with each other on these matters.

Mr. HOLLAND. That can hardly be true on the two committees to which I have the honor to be assigned, the Committee on Public Works and the Committee on Agriculture and Forestry. I find no division as amongst the members of our party or the other party on any partisan lines, and I have been rather amazed to see the complete unanimity with which our eight brethren on the Committee on Labor and Public Welfare have marched together in their support or opposition of any measure which touched the field of labor.

Mr. DOUGLAS. We are happy to be companions in a good cause, I may say; but I should like if I may to ask the Senator some questions, on lines 6 and 7 of his amendment.

Mr. PEPPER. Mr. President, will the Senator yield for just a moment, before he asks the question?

Mr. DOUGLAS. I yield.

Mr. PEPPER. If my colleague will allow, I should like to call attention to the fact when this matter was before the committee, as the Senator from Ohio and other members of the committee will attest, the committee went so far as to permit a listener, Mr. Pool, who has been identified somewhat by association with this amendment, who has advocated it, who wrote a letter to the committee on behalf of it—I think perhaps he came and testified—we allowed him actually to come into the committee room and sit with the committee in executive session, to see whether we could work out something of the character which my distinguished colleague now proposes.

After we had considered it and heard the representatives of the Wage and Hour Division telling how many people would be uncovered if such an amendment were adopted, and contemplating the difficulties which would be encountered if that amendment were in the law, it was finally not pressed by members of the committee who had previously urged it, but they did reserve the right to support such an amendment later, if they chose to do so, if it were submitted on the floor of the Senate. So the committee did not neglect to give consideration to this proposal, but even permitted a private lawyer to come into executive session and sit with the committee and discuss the question.

Mr. HOLLAND. I will say to my colleague that I am sure that what he has stated is exactly correct, and yet the committee reported a bill which is materially different from that which is presented as affected by the various committee amendments offered at the last moment. I hoped that the change of heart on the part of the committee which has manifested itself in other portions of the bill might perhaps be manifested also in this particular matter, which I think is of tremendous importance to the Nation, and particularly to small businesses.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. DOUGLAS. May I ask the Senator if he will turn to lines 6 and 7 of his amendment. I should like, if I may, to modify the statement I made earlier that this provision of his amendment seems to be identical with the present law. As I read the amendment, it provides that if a sale is made within the State in which the establishment is located, it is an intrastate sale.

In other words, the test is made the place of sale, not the person to whom the sale is made or the delivery made.

Perhaps I may be making a speech instead of asking a question, but I should like to illustrate the point. Suppose there is a store close to the border line between the States of Indiana and Illinois, and more than 50 percent of the patrons of that store come from Illinois. The store is really engaged in interstate commerce, because it is selling to Illinois residents to many of whom it makes deliveries. That situation quite frequently occurs, because the State of Indiana does not have a sales tax as has the State of Illinois. I would say that it is interstate commerce in those cases where the sale is made in Indiana but the delivery of goods by the store is made in Illinois. But the sales of all take place within the State of Indiana, and therefore, according to the Senator's definition, it would not be interstate commerce, but intrastate commerce.

Mr. HOLLAND. I may say to the distinguished Senator that if his conception of what constitutes interstate sales is correct, it is different from what I understand to be the rule now being enforced by the Administrator. I do not understand that there is any artificial distinction made to bring a sale by an Indiana citizen to an Illinois citizen, who comes to the store to buy and who buys in ordinary retail quantities and pays the ordinary retail price, into the purview of interstate commerce. If that were the test, the hotels in the State of Florida would be conducting an interstate business. As the Senator knows, Florida offers entertainment to countless citizens from other States. I do not understand that the Administrator has ever made any contention—if he has, he has gone beyond what I have understood—that that constitutes interstate business. But if there is any feeling that it might be such a thing, it makes me all the more warmly espouse our amendment. It is manifest to me that such a ruling would be completely out of line with what I understand to be the real standard and measure of what constitutes interstate business.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. PEPPER. Possibly the Senator from Illinois has in mind a case in which sales might be made to a carrier. In the first part of the amendment of my distinguished colleague there is no exemption with respect to sales to a transportation company. It relates to the laundry section. Possibly the delivery of a commodity with the design that it is to be transported out of the State might be regarded as a sale in interstate commerce.

Mr. HOLLAND. I thank my colleague. I do not understand that that particular element has been brought into the discussion at all.

Mr. PEPPER. If the Senator will permit one other question on that point, carrying out the interrogation made by the Senator from Illinois, I should like to invite the attention of the Senator from Illinois to the point. The amendment offered by the Senator from Florida changes, does it not, the criteria to sales made within the State in which the establishment is located, rather than to sales made in intrastate commerce. That was the point to which I was trying to invite attention. If the Senator will examine the bill, if he has it before him, he will notice in section 13 that in defining the exemption the present law provides as follows:

> The provisions of sections 6 and 7 shall not apply with respect to—

Then I skip down to the pertinent part—

> any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.

It does not say "is within the State." It says "is in intrastate commerce"; meaning, I assume, as distinguished

from or in contradiction to interstate commerce. But the amendment of my distinguished colleague would provide exemption to any employee of any retail or service establishment "more than 50 percent of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located."

The present law takes into significance the legal concept of intrastate commerce as distinguished from interstate commerce; but in that part of the amendment of my distinguished colleague geography, in the nature of the commerce, is made the criterion.

Mr. HOLLAND. I thank my distinguished colleague, but I should like to invite attention to the fact that the Administrator himself, in his recommendation, calls attention to that very cloudy feature of the present law. He calls attention to the fact, in particular, that any farmer producing goods for interstate commerce might be held to be not within the exempt classification of the present law. He found a manly means to phrase a rule which took that particular question out of the picture. We are trying to take it out so clearly that there cannot be any question about it, that there cannot be a cloud left indicating that when a sale is made to a farmer who is producing goods which will move across a State line it might be regarded as an interstate sale. That, we think, is a completely false standard, and we are trying to substitute a clear, fair, and enforceable standard which the sponsors in the House say complies particularly and meticulously with their original intent. We are trying to substitute that sort of a clear standard for the cloudy provision in the present law.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. HOLLAND. I yield.

Mr. TAFT. May I invite attention to another reason why that language is necessary and desirable? In our supplemental views we pointed out that a retail business might be found to be engaged in interstate commerce because it received merchandise which had crossed State lines, even though the goods came to rest within the State before the retailer handled them. In other words, as the court pushed the concept of interstate commerce backward to the producer, here is an effort to push the idea forward to the consumer. But to make clear that that is not what Congress intends, it is desirable to say, rather than that it is a sale in interstate commerce, that it might be said to be interstate commerce because the goods come in from outside before they reached the store. If we want to make it clear, the language in the Senator's amendment is necessary and desirable.

Mr. HOLLAND. I thank the Senator, and I think his statement is exactly correct. I think the adoption of the amendment would completely clarify the point, which is not only admittedly cloudy now, but may become increasingly so as the courts continue in their uncertain and unpredictable course of extending the definition of what constitutes interstate commerce.

Mr. AIKEN. Mr. President, will the Senator from Florida yield for a question?

Mr. HOLLAND. I yield to the Senator from Vermont.

Mr. AIKEN. I have been wondering about some words in the Senator's amendment. I read beginning with line 8 on page 1:

> A "retail or service establishment" shall mean an establishment 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale—

It is all right so far. Then it proceeds—

> and is recognized as retail sales or services in the particular industry.

Does not that throw the situation wide open for each industry to determine whether its sales shall be considered retail or wholesale?

Mr. HOLLAND. It is not the judgment of the sponsors of the amendment that that would be the result. On the contrary, it is our belief that the Administrator would have a function to perform, and if he goes astray, in the judgment of individuals who are affected he could be appealed from, the case could be taken to court. It is our judgment that we are simply using words and terms in the way they are customarily understood, just as was done on the passage of the original act, except that we are going far enough to leave something definitive by this amendment. In the original act we spoke of retail establishments and service establishments, and no one yet has been able to jell a clear definition of what either of those types of agencies comprehends.

Mr. AIKEN. What is the purpose of the words "and is recognized as retail sales or services in the particular industry?" Does not that leave the interpretation up to the industry concerned? It seems that with those words out there would be little objection to the Senator's amendment, and it probably would be a good thing to put in the provisions which we are given to understand are already accepted by the Government. With these words in, "and is recognized as retail sales or services in the particular industry," it does seem to me it is left pretty wide open for an industry to determine for itself whether it is to come under the provisions or not. I am asking for information.

Mr. HOLLAND. There is no more question left there than under the original act, when the words "retail establishment" and "service establishment" were used. The question is what constitutes a retail sale and what constitutes service, and in each case that is not defined in the act, but instead is defined variably in various industries by determining what are the habits and practices in the industry.

Mr. AIKEN. Let me put the question in another way. Why are these words necessary to the amendment, and in what way do they strengthen and clarify it?

Mr. HOLLAND. They make it very clear, crystal clear, that no one standard can apply to every type of business, but that the standard we are trying to write is to give weight to a certain type of sale, which is a bona fide retail sale, and for the determination of that the Administrator and the courts, as well as the people who are in business, are warned that the rules prevailing in the business, the understanding of the term in the business, would apply, with complete knowledge that the same understanding may not apply in different businesses, because the same standard or rule cannot at all be safely applied to all businesses.

Mr. AIKEN. Will the Senator permit me to put the question in still another way, and I think this is the last way in which I shall propound it. The language is "and is recognized as retail sales or services in the particular industry." Who does the recognizing?

Mr. HOLLAND. The Administrator, the courts, the merchant, his employees, the enforcement officer, and everyone else. Here is the standard set up, and for the determination of the standard everybody who is concerned has a right to discover what his standard in the particular industry is. An employee who has rights under the bill, if he sees something happening in the name of retail business which he knows is not retail business, has a perfect right to assert himelf, and when he asserts himself, he shall not have his complaint fall on deaf ears. If he can show that a practice which is being sought to be shown as a retail practice is not so at all, of course it will not be so held.

Mr. AIKEN. Then we have the Senator's assurance that this wording is clearly not intended to permit any industry to determine for itself what are generally recognized as retail sales?

Mr. HOLLAND. No. We discussed that matter earlier in the afternoon. There could be various criteria which could be applied, one of which of course would be the conclusion of the trade association in the particular industry. But that is only one criterion. Others would apply. The well-settled habits of business must be applied. They will not necessarily be the same in all trades or businesses.

The PRESIDING OFFICER. The Chair reminds Senators that while the unanimous-consent agreement did not fix the hour for recessing, it did fix the time when the Senate should return.

Mr. PEPPER. I thank the Chair. I was going to call the attention of able Senators to that fact, in the hope that perhaps they might conclude their discussion as early as possible.

Mr. AIKEN. I was merely trying to get the meaning of these few words clear in my own mind, and also clear for the RECORD, because with such clarification, if the words are clarified in the right way, as one member of the committee I see little objection to the remainder of the Senator's amendment.

Mr. HOLLAND. I thank the Senator.

Mr. AIKEN. If these words would permit each industry to decide for itself whether sales were retail or not, I could see considerable objection to the amendment.

COMMITTEE SERVICE

On motion of Mr. LUCAS, and by unanimous consent, it was—

Ordered, That Mr. NEELY be assigned to the chairmanship of the Committee on the District of Columbia;

That Mr. KERR be excused from further service as a member of the Committee on Interior and Insular Affairs and assigned to service on the Committee on Finance;

That Mr. KEFAUVER be excused from further service as a member of the Committee on Interstate and Foreign Commerce and assigned to service on the Committee on the Judiciary;

That Mr. HUNT be excused from further service as a member of the Committee on Rules and Administration and assigned to service on the Committee on Interstate and Foreign Commerce;

That Mr. TAYLOR be assigned to service on the Committee on Rules and Administration; and

That Mr. LEAHY be assigned to service on the Committee on the District of Columbia and the Committee on Interior and Insular Affairs.

RECESS

Mr. PEPPER. Mr. President, I move that the Senate stand in recess until the hour of 8 o'clock.

The motion was agreed to; and (at 7 o'clock and 8 minutes p. m.) the Senate took a recess until 8 o'clock p. m.

EVENING SESSION

On the expiration of the recess, the Senate reassembled, when called to order by the Vice President.

MINIMUM WAGE STANDARD

The Senate resumed the consideration of the bill (S. 653) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

Mr. PEPPER. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hayden	Millikin
Anderson	Hendrickson	Mundt
Brewster	Hickenlooper	Murray
Bridges	Hill	Myers
Butler	Hoey	Neely
Byrd	Holland	Pepper
Cain	Humphrey	Robertson
Capehart	Ives	Saltonstall
Chapman	Johnson, Tex.	Schoeppel
Connally	Johnston, S. C.	Smith, Maine
Cordon	Kem	Smith, N. J.
Donnell	Kerr	Sparkman
Douglas	Kilgore	Stennis
Dulles	Knowland	Taft
Eastland	Langer	Taylor
Ecton	Leahy	Thomas, Okla.
Ellender	Lucas	Thomas, Utah
Flanders	McCarthy	Thye
Frear	McClellan	Tobey
Fulbright	McFarland	Vandenberg
George	McKellar	Watkins
Gillette	McMahon	Wherry
Graham	Magnuson	Wiley
Green	Malone	Williams
Gurney	Martin	Young

The VICE PRESIDENT. A quorum is present.

A unanimous-consent agreement has been entered into to vote at 9:30 p. m. The time from now until then is to be divided, two-thirds to the senior Senator from Florida [Mr. PEPPER] and one-third to the junior Senator from Florida [Mr. HOLLAND]. Taking out the time consumed by the quorum call, the senior Senator from Florida has about 50 minutes and the junior Senator from Florida about 25 minutes.

Mr. HOEY. Mr. President, will the Senator yield for a moment?

Mr. PEPPER. I yield.

Mr. HOEY. I offer an amendment to the pending measure, which I ask to have printed and lie on the table.

The VICE PRESIDENT. The amendment will be received, printed, and will lie on the table.

Mr. PEPPER. Mr. President, I regard this as one of the crucial votes which will be had on this measure. It goes to the very heart of one's attitude toward the whole subject of the Fair Labor Standards Act. It has been represented by the distinguished Senators who are the advocates of the amendment that it was for the clarification of the law. I have no doubt that it would have that practical effect; but I was reminded of the story told on the floor the other day by the able junior Senator from West Virginia [Mr. NEELY]. Senators will recall that his time was limited, and he was speaking very animatedly upon a given subject, when he was interrupted by the arrival of a messenger from the House of Representatives. The Chair interrupted the Senator from West Virginia, although the Senator did not have very much time to spare, for the purpose of receiving a message from the House. The distinguished Senator from West Virginia said in his own inimitable way, "Mr. President, this incident today reminds me of the time when J. P. Morgan one day was accosted by a likable tramp, and was so enamored of him that he gave him $5 and sat and talked with him for a good while. He was so intrigued by the fellow that he told him that if he would come back next Saturday afternoon he would give him $5 more. Next Saturday, of course, the tramp was back and Mr. Morgan gave him $5. The same thing happened the next Saturday afternoon. Mr. Morgan became tired of the loquacious fellow, and when he returned the fourth time Mr. Morgan said to one of his aides, "Just tell the fellow I am out; that I cannot be here this afternoon." The aide asked Mr. Morgan, "What shall I tell him is the occasion for your absence?" "Oh," said Mr. Morgan, "tell him a member of my family is going to be married, and that I had to leave hurriedly. But here is $2.50 instead of $5." When the tramp arrived the aide gave him the $2.50 and told him the reason for Mr. Morgan's absence. The tramp took the $2.50, looked at it rather hesitatingly, and then said, "Well, all right, I will take it this time, but the next time a member of his family gets married I hope he does not do so at my expense."

Mr. President, to get at the heart of this matter, the amendment of my distinguished friend and colleague would clarify the law all right, but at the expense of the workers of the country who are presently covered by the law, or who would be covered by it in the future. My distinguished colleague said that he had received messages from a considerable number of people and organizations, and he named the Automobile Dealers' Association, and the Hotel Operators' Association, and the Retail Merchants' Association, and other entrepreneurs and employers. He said he had never seen such unanimity among the people affected as had appeared in this case. I rose to make inquiry whether my distinguished friend had received any communications from the employees who would be deprived of coverage by his amendment.

I wonder if they do not have the right to be heard. I wonder if they are not interested parties in this case. I wonder if we want to clarify the Fair Labor Standards Act at the expense of 200,000 workers of America who would otherwise be getting, not a bounty, but a minimum wage of 75 cents an hour, which, for a 40-hour week, is $30 a week, and for 4 weeks is $120, about $1,500 a year.

Mr. President, I am not asking Senators to take my word. I received a letter dated today from the Wage and Hour Administrator, and I should like to read it, if I may, to the Senate. It is addressed to me, and is dated Washington, D. C., August 30, 1949. It is as follows:

Pursuant to your request, I have the following comments on the Holland retail and service establishment amendments to S. 653.

My best estimate as to the effects of these amendments, based on information now available to me, and depending upon the interpretation of these amendments by the courts, is that if they are enacted, they may completely remove from the protection of the Fair Labor Standards Act approximately 200,000 employees who are now covered by its wage-and-hour provisions.

The bill would substitute a completely new set of definitions of a retail or service establishment in place of the clear definition now recognized by the courts. Years of litigation would be required to determine how the exemption should be applied. The amendment would give rise to exceedingly difficult problems in administration, since it is by no means clear what different industries regard as retail sales.

Another major objection to the Holland amendment is that establishments which specialize in selling or servicing business customers could nevertheless be considered retail establishments. This is contrary not only to Supreme Court decisions on this question but also to the principles held by experts in the field of distribution.

The Holland amendment also provides that a laundry or linen-supply house which is primarily engaged in commercial work is exempt as a retail-service establishment. Under the present law, as you know, it is quite clear that the ordinary home laundry which specializes in work for private consumers is exempt even though it may perform up to 25 percent of gross sales in commercial work in large quantities.

In effect—

Concludes the Administrator—

What the Holland amendment does is to include substantial segments of wholesale distribution under the retail exemption.

Mr. President, that is this question in a nutshell.

Before I get away from it, I also have a letter dated this day from the Administrator on the subject of the hotel exemption. I wish it to be crystal clear that hotels, restaurants, barber shops, beauty establishments—in other words, everything that we in ordinary parlance regard as local small retail or service establishments—are completely exempt

from the application of the present law. This is the letter on hotel exemptions:

UNITED STATES DEPARTMENT OF LABOR,
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISION,
Washington, D. C., August 30, 1949.

Hon. CLAUDE PEPPER,
United States Senate,
Washington, D. C.

DEAR SENATOR PEPPER: It has been called to my attention that some confusion has arisen regarding the status of hotels under the Fair Labor Standards Act and that the Wage and Hour and Public Contracts Divisions have held that hotels must comply with the provisions of this act. I would like to make clear to you my position on this matter.

I do not know of any situation during my administration and during that of former Administrators, encompassing a period of more than 10 years, where an ordinary hotel serving the general public has been found not to be exempt under the Fair Labor Standards Act.

Very truly yours,
WILLIAM R. MCCOMB,
Administrator.

As I ventured to say a moment ago, first, the purpose of this amendment is to clarify the law, but to clarify it so that fewer workers will be covered. But I wonder if really the effect of it is going to be to clarify the application and inpretation of the law. I have before me the rulings of the Wage and Hour Administrator. I have before me decisions of the United States Supreme Court—and, if it makes any difference, a definitive decision rendered for a unanimous court was written by a former distinguished colleague of ours in the Senate, a man who bore no reputation for being rabid in the advocacy of radical principles or policies, Mr. Justice Burton of the United States Supreme Court. Reference has been made to what some House Member said about what was the original intent of the Fair Labor Standards Act, and to the effect that the purpose of this amendment was to restore the original intent. Over there sits the distinguished Senator from Utah [Mr. THOMAS]. He was the second or third ranking Democratic member of the Committee on Education and Labor out of which this legislation came. He was a member of the conference committee which wrote the final form of the bill. The distinguished Senator from Louisiana [Mr. ELLENDER] was a member of that conference, if I correctly recall. I know that he was a member of the committee, and I believe he was also a member of the conference. I am confident that he was. The Senator from Florida was a member of the conference and a member of the committee. We ourselves have some recollections as to what the intent of that act was.

While we did give exemption to retail establishments and retail service establishments, we were thinking about the corner grocery store, the drug store, the barber shop, and beauty shop. We were thinking about the kind of store or establishment which I meet when I walk down the streets of my little city in Florida, the kind which Senators ordinarily encounter when they walk down the streets of their home towns or cities. We did not think primarily of a big establishment which did more than 25 percent of its business with those who purchase not as consumers, but as business customers. I do not know of any grocery store in my home town that makes more than 25 percent of its sales to business customers and industrial enterprises intending to make a profit from the purchase instead of to consume the article or enjoy the service required.

The United States Supreme Court can be expected to have conducted some research on the subject of intent. I read from a decision written by a former colleague, Mr. Justice Burton, of the United States Supreme Court. This opinion was written in 1946:

While its language and coverage were changed in details—

The Justice means from the time of its introduction—

the bill did not depart substantially from its original purpose. This purpose remains the key to the meaning of the words defining its coverage and also to those defining exemption from coverage. There never was an intent expressed to exempt retailers other than the local merchants of the type dealing with the ultimate consumer. Section 13 (a) (2) clarified the exemption of such of these as were near State lines and of local merchants whose purchases might be interstate although the greater part of their sales were intrastate.

This is the United States Supreme Court speaking on this subject. Justice Burton states in an earlier part of the opinion that at first the words "affecting commerce" were used in the bill, and that they were later deleted. Then he says:

The remaining coverage relates only to employees (1) "in (interstate) commerce"—from whom section 13 (a) (2) exempts employees of retail and service establishments the greater part of whose selling or servicing is in intratstate commerce and to those (2) "in production of goods for (interstate) commerce."

The debates in Congress show an attempt to restrict the word "retail" to such transactions with ultimate consumers as are commonly carried on at local drygoods, butchering, or grocery stores. The words "service establishments" and "servicing," however, were introduced in the final conference report and were not discussed on the floor.

Mr. President, I know of no better guide for what the Congress had in view than an analysis by the Supreme Court of the United States, especially by a Justice who had had legislative experience in the Senate.

That is exactly what the Wage and Hour Administrator has put into effect. I have it all here in his own words. He makes very clear what the standards are. There is no ambiguity. No; there is too much certainty for those who have to pay wages. That is the reason why they are so anxious to be exempted. It is not the uncertainty, Mr. President. It is the fact that they are already covered, and they know they are covered. They prefer not to be covered. They had a right to resist coverage, but, Mr. President, it was my experience that there were a few who wanted to be covered on the employer side when we enacted this law. I received a great many bitter protests by letter, by telegram, by telephone call, and by personal contact. Some felt that they could not afford to pay the rates. Some felt that they should not be covered for economic reasons. Perhaps some did not want to make the division of their income with their employees as generous as the law would have required. But if the criterion of coverage is to be those who would like to be exempted, I doubt if we shall have more than a shadow of coverage left when we get through with this legislation.

Here is the 1948 annual report of the Wage and Hour Administrator. Let us see if there is any ambiguity in the application of this law:

In view of the Supreme Court decisions on the subject, it is recommended that the Congress consider amending the Fair Labor Standards Act to remove doubt in application of the section 13 (a) (2) exemption for "any employee engaged in a retail or service establishment the greater part of whose sales or services is in intrastate commerce."

He was only purporting to clarify it so that the wage-hour administrative regulation would be embodied in the statute. If there was any ambiguity, that would settle it. He did not propose to clarify the law by relieving coverage.

The report continues:

By incorporation in the act of specific language similar to that used in the tests applied by the Divisions in determining the eligibility of an establishment for the exemption, doubt raised about the application of the tests in varying situations would be removed and uniformity in administration of the act could be achieved.

At present, the Divisions hold that the exemption applies to employees engaged in an establishment that meets two requirements:

(1) It must be a retail or service establishment, and (2) the greater part of its selling or servicing must be "in intrastate commerce."

The second requirement is regarded as met in a situation where it is determined that more than 50 percent of the total gross receipts of the establishment is derived from selling or servicing "in intrastate commerce," defined for purposes of this exemption as a sale or service in which all elements of the transaction take place within the same State. The determinations with respect to this requirement have not proved difficult to apply.

The first requirement, however, entails consideration of several factors to determine whether the transactions carried on by the establishment are such as to characterize it as a retail or service establishment. While other characteristics of the establishment must be considered, it is clear at once that an establishment engaged to a substantial extent in making nonretail sales or performing nonretail servicing cannot be regarded as a retail or service establishment. The Supreme Court has stated that the same general principles apply to service establishments as to retail establishments for the purposes of this exemption.

Mr. President, here is the heart of the matter:

The basic test in determining whether a sale is a retail sale is the purpose of the buyer.

Does this amendment purport to define purpose more accurately?

I continue to read from the annual report of the Wage and Hour Administrator:

A transaction in which goods are bought for personal use by a private consumer is a retail sale.

That fits right in with what Mr. Justice Burton says, and it follows his opinion.

I read further from the annual report of the Wage and Hour Administrator:

> The sale of goods for resale or other business use or, in general, for use by any purchaser other than the private consumer is a nonretail transaction.

Is not that rather easily ascertained? If a farmer goes into a store and buys a truck, if he is going to take the truck to his farm and operate it there, that is a retail sale. Let us suppose that a representative of a business concern goes into a store to buy a desk or a water cooler. If the desk or the water cooler is not different from the one the ordinary consumer or lawyer or doctor might have, or if it is one that is in ordinary use, even if the purchaser is a business purchaser, that is a retail sale.

But suppose a painter, instead of wanting to buy a bucket of paint to paint his house or instead of being a contractor who says to the clerk in the store, "I have a contract to paint Mr. Jones' home, and I want to buy the paint from you," on the contrary says to the clerk, "I am going to build a subdivision, and I am going to buy all my paint from you." Mr. Justice Burton in his opinion says that is not a retail sale.

Suppose a purchaser buys a 10-ton truck adapted only for use by a contractor, and suppose the purpose to be served is a business purpose. Then that sale is not a retail sale.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. TAFT. It is not claimed that the sale of one truck is a wholesale sale, is it? The Wage and Hour Administrator does not claim that, does he? What else can it be but a retail sale?

Mr. PEPPER. Mr. President, I do not know of any general categories or types of sales except wholesale and retail. Generally such sales partake more of a wholesale than of a retail nature.

Mr. TAFT. Certainly a sale of one truck is not a wholesale sale.

Mr. PEPPER. But I am talking of a sale of a truck which for all practical purposes is a custom-built truck.

Mr. CAPEHART. Mr. President, will the Senator yield?

Mr. PEPPER. Of course I am speaking under a time limitation, and I hope Senators will understand that. However, I yield.

Mr. CAPEHART. It is not quite clear to me how the Senator expects an automobile dealer to run his business if part of his sales are retail and if another part, as the Senator has mentioned, are wholesale. How will such a dealer operate his business?

Mr. PEPPER. He will merely keep a record of what sales are retail and what sales are not retail. If more than 25 percent of his sales are not other than retail, he is operating a retail service establishment or he is a retail dealer.

Let us consider the case of a coal dealer. Do Senators know why the coal dealers are complaining? They want the right to sell a carload of coal—all the testimony is in the record; and let me say that I understand that a carload of coal is 100 tons of coal—and to have that regarded as a retail sale. They want to be able to sell it to the Stevens Hotel in Chicago, for example, or to the Westchester Apartments in Washington. The Wage and Hour Administrator says that is not a retail sale. An ultimate consumer does not buy 100 tons of coal; at least, that is the experience of the Wage and Hour Administrator.

So, as I have said, the Wage and Hour Administrator has laid down criteria which are clear and understandable and are being applied. They are three: First, what is the purpose of the purchaser? In other words, what is the nature of the use to which the article is to be put? What is the character of the article, and what is the quantity of the goods sold?

Let me give some definitions of what are in their nature retail and what things are characteristic of wholesale transactions.

The Standard Industrial Classification developed by experts of the various industries defines retail trade to include—

> Establishments engaged in selling merchandise for personal, household, or farm consumption, and rendering services incidental to the sale of the goods.

The 1939 Census of Business Reports contains the following definition:

> Selling in a retail manner is selling in individual units or small quantities to personal and household consumers, from established places of business, for consumption, rather than for resale.

Webster's New International Dictionary defines "retail" as—

> To sell in small quantities, as by the single yard, pound, gallon, etc.; to sell directly to the consumer, as to retail cloth or groceries.

The standard textbook on wholesaling—Beckman and Engle's "Wholesaling Principles and Practices"—distinguishes between wholesaling and retailing by the following terms:

> Wholesaling includes all marketing transactions in which the purchaser is actuated solely by a profit or business motive in making the purchase.
>
> Retailing includes all marketing transactions in which the purchaser is actuated solely by a desire to satisfy his own personal wants, or those of his family or friends, through the personal use of the commodity or service purchased.

Is the Wage and Hour Administrator monstrously wrong when he adopts the same criteria, especially when the United States Supreme Court laid the criteria down before him?

Mr. President, let me state a little more in regard to the qualification of the amendment. What does the amendment do? The present law contains, in section 13 (a), a description of the exemptions of retailers, in this language:

> (2) Any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.

It does not say "the greater part of whose selling or servicing is in a given State," but it says "is in intrastate commerce as distinguished from interstate commerce."

The amendment offered by my distinguished friend and colleague eliminates entirely intrastate commerce, and makes geography the criterion, for his amendment extends to—

> Any employee employed by any retail or service establishment, more than 50 percent of which establishment's annual dollar volume of sales of goods or services is made within the State—

It does not say "in intrastate commerce," but it says—

> is made within the State in which the establishment is located.

So there is that change in the law, and it has significance; it was not done accidentally. It means we do not count as interstate sales the sales made to an interstate carrier or to one engaged in the production of goods for commerce outside the State. It is a definition weighted against the workers.

Mr. President, I am going to come back to that in just a moment, and state one of the basic reasons why we oppose the amendment. I shall state it now, and I shall repeat it. It is that my friends are seeking a retail tag to give a wholesaler exemptions from coverage. That is what it amounts to. From what coverage? Not from coverage with respect to his intrastate sales. A retailer has the right to sell 50 percent of his goods across State lines, and not one of his employees can or will be covered. A wholesaler does not have that right, Mr. President. Obviously, therefore, they wish to enlarge the category of the retailer. By doing so, they give a greater immunity to shipping in interstate commerce, without a man in the enterprise being covered.

But what about the wholesaler down the street who is a competitor? In the case of one who in substance is wholesaling, every one of his employees who may participate in interstate commerce is covered by the law. Talk about fairness competitively—what about the real, acknowledged, admitted wholesaler who has to compete with this newly defined retailer who in substance is in the wholesaling business? That wholesaler does not have one employee exempt, and the retailer under this definition has every employee exempt, if he sells only 50 percent, or, to be more literal, 49 percent of his goods across State lines.

I asked the question of the distinguished advocates of this amendment, and I ask it again, would they accept a modification providing that none of this business was done across State lines? They have not been disposed to accept it. I said, "Would you accept an amendment that 50 percent of the sales could be wholesale in character, but keep the present definition of the law by the Supreme Court and the Wage-Hour Administrator, which now has become fixed?" That was declined. I asked, if they would accept a limitation that not more than 10 percent of the goods could go across State lines. They turned that down. They claimed the right unimpaired to enlarge the definition of the

retailer and then the immunity to ship 49.99 percent of their goods across State lines without a single worker being covered by a Federal law. That is the significance of this amendment, Mr. President.

Going a bit further, on the question of clarification, here is the definition:

A "retail or service establishment" shall mean an establishment 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale.

What does "resale" mean? The Senator from Illinois [Mr. DOUGLAS] this afternoon asked the question, "What about the contractor who buys enough paint to paint a whole subdivision? Is that resale?" The reply was "I would regard it as such." But the contractor did not sell paint; he sold houses. How many lawsuits would it take to settle that point?

A man buys lumber at a lumberyard, not for one house, but for a subdivision. Is that a resale? He does not sell the lumber as lumber; he sells a hundred houses. How many lawsuits would be involved before that question was settled?

Now here is another objection to the amendment which is going to clarify ambiguity and eliminate all disputes. It says, "is not for resale, and is recognized as retail sales or services in the particular industry." I thought, Mr. President, I heard something about a man not being a judge in his own case. It looks exactly as if Congress intended the industry to be the arbiter. How many lawsuits is it going to take to clarify that provision of this clarifying amendment?

Mr. LUCAS. Mr. President, will the Senator yield at that point?

The VICE PRESIDENT. Does the Senator from Florida yield to the Senator from Illinois?

Mr. PEPPER. I yield.

Mr. LUCAS. Does the Senator agree with me that if this amendment becomes law, under the very provision he is now discussing we shall add confusion and uncertainty both upon the part of the employers and the employees, and we shall have fastened on to us years upon years of litigation over what that provision means?

Mr. PEPPER. Mr. President, the implication of the Senator's question answers itself. We shall have thrown away 11 years of tedious and painful litigation. The clarification is on the side of the certainty that we now know. Some may not like the present law, but at least they know what the law is. But if we start out with this new definition, Mr. President, we have got 11 years more of litigation before we reach the point where we now are, in the clarification of the law.

Mr. President, as was pointed out this afternoon on the floor of the Senate, is it not in the interest of industry to take a liberal interpretation? Is it necessary to prove in court what the industry says the practice is? That means it is taken out of the legislative hands; it is taken out of the forum of the judiciary, and left to the industry to decide what is retail and what is not retail.

The coal industry says, "We can sell 100 tons of coal. How dare you say it is not retail?" Perhaps the automobile industry says, "We can sell a fleet of trucks." Someone else says, "We can sell hundreds of thousands of gallons of paint." Mr. President, can it be a clarifying amendment? Can it bring certainty to this troubled field? As you know, Mr. President, it is sometimes better in a lawsuit to know what the law is, than forever to face an uncertainty as to what it will be. I see eminent lawyers in this Chamber. How can the courts, under our blessed system of jurisprudence, definitively determine this dispute, except by case after case of inclusion and exclusion? That is what we had for 11 years. Yet in the Senate, after a few hours' debate, it is proposed to tear up and overturn the adjudicated cases which have now become the settled law of the land, the decisions of the highest courts. Remember Mr. Justice Burton decided that case in 1946. If it had been far wrong, I dare say it would have been reviewed and materially altered since 1946.

Mr. President, it is not the uncertainty of the law my distinguished friends wish to avoid. It is the painful fact of the certainty of the law of coverage that has now been established.

Mr. President, much has been said about the laundry business. The present law does not apply to the little laundry any more than it applies to the barber shop in our home towns. But if more than 25 percent of the business of a laundry is not for housewives and for homes and for ordinary consumers, but is for big enterprises of commercial or industrial character, or if the laundry handles business of that kind in such volume that it is distinct from home laundering, if it is more than 25 percent of their dollar volume the business is not retailing; and, in that event, what is the penalty? Every employee is not covered, but only those who are engaged in interstate commerce. Let us consider both sides of this question.

If the amendment offered by my distinguished friend shall prevail, it will mean that 200,000 workers will be taken out from under coverage. That means 50 percent of the sales of retail stores and service establishments may be made across State lines, but not a worker will be covered. If we prevail, what will be the awful result? The law will remain settled and clear, and all that will happen is that only those employees in the laundry or in the store whose policy is nonretail, all those who participate in interstate commerce, will be covered; those who do not, will not be covered. That would mean ordinarily the shipping clerk, the one who orders the goods from afar, the one who goes to the station and brings them up to the warehouse, and, in the case of big central warehouses, those who operate the warehouses.

Is that a situation which would move the Senate to disturb a settled law, remove 200,000 workers from coverage, and rob them of the hope of coverage in the years ahead?

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. PEPPER. I yield to the Senator from Illinois.

Mr. LUCAS. The Senator is talking about 200,000 workers. In view of the fact that the bill does not undertake to add any coverage, it does seem to me that those who seek to take out from under the law persons who are already covered, instead of doing something in a progressive way, are going in the opposite direction.

Mr. PEPPER. That is the last point. I thank my distinguished colleague for raising it. I leave the last question with my distinguished colleagues.

The VICE PRESIDENT. The Senator has until 4 minutes after 9 o'clock.

Mr. PEPPER. I thank the Chair.

Mr. President, I leave this thought with my distinguished colleagues. This morning I was stirred. I felt a little rebuked by the eloquence and the sincerity of the burning words of the distinguished Senator from New Hampshire [Mr. TOBEY]. He made my conscience prick itself a little. Why, Mr. President? Because I was here championing the bill. About all I had done during the day was to accept emasculating amendments in the hope that possibly we would be able to pass a bill which would make a little contribution to health and happiness. I was not one of those who wanted to retreat. I cannot, for the life of me, fail to see the misery in households which are affected. I like to look at the table to see what the diet is. I should like to see the quality of the clothing they wear. the sort of recreation they can enjoy. When we hear the desire of the employer to be exempt, I would ask the Senators to consider the fellow who is not able to help himself. He is not a union member, ordinarily; he does not have a strong organization behind him to enforce his demands. Organization members are receiving an average of $1.77 an hour. This bill affects the little fellow at the bottom of the ladder who has no protection but the law. All the help he ever received was when a beneficent Government interested itself in his standard of living and in his welfare.

We started out with a bill which would have extended coverage. We could have employed the full Federal power and made a definition not only of the production of goods in interstate commerce, but the production of goods affecting interstate commerce, as we had the power to do, as the Supreme Court said. We could have done that as a Congress. The distinguished and eminent Senator from Utah [Mr. THOMAS] introduced a bill recommended by the Administrator and, no doubt, by the President. But we elected to forego all that.

I happened to be chairman of the subcommittee. It was a distinguished subcommittee. The able Senator from Ohio [Mr. TAFT] was a member of it; the distinguished Senator from Missouri [Mr. DONNELL] was a member of it. The eminent Senator from Oregon [Mr. MORSE], on the minority side, was a member of it; and there were the eminent chairman of the committee, the eminent Senator from West Virginia

[Mr. NEELY], the junior Senator from Illinois, distinguished as he is, and myself.

As chairman of the subcommittee, Mr. President, I believe my colleagues will attest that I bent over backward to get a unanimous-consent agreement as to the kind of bill we should bring to the Senate. When I had to concede, I conceded. The only thing with which we came to the Senate, Mr. President, was a little tightening up of the child-labor law and the right of the Government to sue, with the penalty being waived, for the back wages of the worker who had not had the courage or the willingness to sue for his own right and due. We did make a little timid step forward. We did come forth with a bill that would have extended the minimum wage to workers engaged in agricultural processing when the work was done by a proprietor other than the farmer. But when we ventured to come within the portals of this great Chamber the frigidity of the atmosphere tended to affect the dominant motif in our attitude, and we went away and retreated back to the present law.

Mr. President, we face the Senate with a bill, therefore, which does little more than raise the minimum wage to 75 cents an hour. I have not yet heard an amendment which would take out our little child-labor provision. I at least hope nothing will happen to that. Mr. President, I do not imply in any sense of the word any criticism, of course, of what our sister body did in its wisdom, but I am told—and I give it as an accurate description of legislative action—that while our sister body raised the minimum wage to 75 cents an hour and conferred appreciable benefits on a million and a quarter workers, it removed the lid of coverage and protection from a million workers. I do not know what the gain is there. If we benefit a million and a quarter persons and take another million persons completely out from any kind of coverage, even the little 40 cents an hour which they now have, I wonder if that is the kind of a bill the Senate wants to pass. Are we going to increase the wages of a million and a quarter workers and then eliminate 200,000 persons already covered, even from the 40 cents an hour, even from the maximum of which they are now the beneficiaries?

Mr. President, today we were accepting some of these amendments, and I thought they appreciably sacrificed the worker. Maybe we could go even further in trying to convince our colleagues that the committee was trying to be reasonable and fair. This afternoon I pointed out how far the committee went in trying to be fair. This is not something which we came here stubbornly to resist. We went so far in executive session that a Mr. Poole, who, I understand, is a lawyer who represents some of the interested employees and who, we were told, was in the waiting room and was informed on the subject, was invited to come and sit at the committee table and tell us about his amendment. We debated it and discussed it. We allowed the Wage and Hour Administrator to give his views upon it, and finally, when we heard both sides, some of the Senators who had advocated it, more or less resignedly, I thought, said they would not press it, at least, but would reserve the right to consider the matter on the floor of the Senate.

I mention that because when they heard the Wage-Hour Administrator, when they saw the difficulty of definition involved, at least they did not press the matter to a final conclusion at that time.

Mr. President, I think the essential decision the Senate has to make is, are we going to give the workers better protection, a better bill, or are we going to take away the gains which have already been hard won for those fortunate enough to have this little succor and encouragement from the Government of their country?

I have the figures here, and let me say just a word about our country. Six million seven hundred and seventy-six thousand spending units, 19,785,920 Americans, by the figures of 1947, made in our America less than $1,000 a year. Thirty-one million made less than $2,000 a year—31,000,000 Americans made less than $2,000 a year. Who would suggest that a budget for an average family of four should be less than $4,000 a year? What Senator would sponsor a budget, a standard of living, for a family of four, of less than $2,000 a year? This bill gives less than $1,500.

How are those people ever to be lifted up? How are they ever going to be contributing to our purchasing power. If we lose our foreign markets, partially or wholly, how are our own people ever to be better able to buy the abounding products of our factories and farms, unless they get a little larger share of the bountiful productivity of this great and beautiful country?

Mr. President, while others are speaking about technicalities, I, too, say that this amendment is not a clarifying, it is a confusing amendment, condemning the country to years of litigation and real uncertainty. I say that if I err in my vote, I shall err on the side of a few more calories in the diet, a little bit better garment, perhaps a little better house, for the family which might profit a little from the favorable action of the Senate.

The VICE PRESIDENT. The Senator has two more minutes.

Mr. PEPPER. I will save that.

The VICE PRESIDENT. The Senator reserves 2 minutes.

Mr. HOLLAND. I yield to the senior Senator from Ohio.

The VICE PRESIDENT. The senior Senator from Ohio is recognized.

Mr. TAFT. Mr. President, I am inclined to agree with the senior Senator from Florida those in control of any industry in this country can afford to pay a minimum wage of 75 cents, but that is not the problem that is involved in this particular case. The problem is, how far does the Federal Government have any jurisdiction or right or propriety in trying to regulate the wages of people who have no relation whatever to interstate commerce, or those who we think should not be included in interstate commerce?

We are not obliged to go to the Supreme Court. The Supreme Court may be right or they may be wrong in their gradual extension of the concept of interstate commerce to a point where it seems to include everybody in the United States, no matter what he is doing, because in some way his activity has some slight effect on interstate commerce.

Congress itself has frequently undertaken to determine what is within the jurisdiction of the Federal Government, and even if it were constitutionally possible, it is to my mind exceedingly unwise for the Federal Government to assume to go beyond interstate commerce in economic matters, and try to regulate the affairs of communities and States who have particular local problems, who are closer to those problems, and who are more inclined and more able to deal justly and correctly with the problems which they have to meet.

I entirely dispute the argument of the senior Senator from Florida that there is any exclusion of persons from the wage-hour law by the amendment of the distinguished junior Senator from Florida. The senior Senator from Florida read a statement from the Wage-Hour Administrator that 200,000 workers would be excluded from the coverage of the act by the Holland amendment. I do not think any workers would be excluded from the coverage of the act as it was originally enacted. It is true that the Wage-Hour Administration, with the assistance of the courts, has steadily encroached on the exemption which was contained in the original act relating to retail establishments. I think the figure is excessive, but it may be that if we let the law entirely alone, the Wage-Hour Administrator would succeed in including into the act not only the 200,000 mentioned, but perhaps a million more persons employed in retail establishments. That is the reason for the amendment, because what has happened has been a steady encroachment on the exemption, enacted and intended by the Congress of the United States, in this case and that case, in many cases getting favorable opinions from the courts, which extended the concept of interstate commerce far beyond what I think Congress thought it was in the beginning, and far beyond what I think it ought to be.

The original act was very simple. It was indefinite. The present proposal is said to be indefinite, but it certainly is not as indefinite as was the original act, which provided an exemption of "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce."

What is a retail establishment? I think everyone knew what a retail establishment was, and there were included in the list those who sold automobiles one by one, those who sold farm machinery to farmers. Retail stores of all kinds, hardware stores, the ordinary laundry, all but the most exceptional laundry, in the minds of all of us are retail establishments. Those are the establishments Congress intended to exempt. But what has happened under the law is that the

Administrator has found new ways of encroaching on the exemption.

The Senator from Florida has dealt with one of those ways. He has developed a concept that sales which are made to people who are not actually going to consume the article that is sold to them are not retail sales. The Senator from Florida upholds the idea that the test is the purpose of the buyer. What on earth has the purpose of the buyer to do with whether a sale is a retail sale or a wholesale sale? The purpose of the buyer, in my opinion, has nothing whatever to do with the question of whether a sale is a retail sale.

Under this concept, the Administrator, with some support from the courts, made rulings in the case of those selling automobiles, under which, if I buy an automobile for my own use, for ordinary pleasure purposes, that is a retail sale, but if an automobile salesman sells a truck to a commercial establishment, that is not a retail sale. He does not dare say it is a wholesale sale, because we all know it is not a wholesale sale. He says it is a nonretail sale. Under that concept he has gradually excluded a large number of dealers on the theory that the test is the purpose of the use to which the article is to be put, and if it is to be used in a business instead of in a home, it is a nonretail sale.

In the case of those who sell farm machinery, the Administrator is implying, with the assistance of the courts, that a farm machinery dealer who sells a tractor or a plow to a farmer is not a retail establishment, because the farmer is not going to use the article just for his own pleasure, he is going to use it to plow the land and make crops which are then to be passed on by him, sold to somebody else.

It is said that a man may sell only in small lots, in an ordinary retail sale, as a retail store, yet if he sells to a factory, and the factory is not going to consume the articles, but use them as tools in the factory, that is not a retail sale. In that way the Administrator has gradually encroached in this whole field, until all stores are doubtful today whether or not they are going to be retail establishments for many months to come.

Let us take a stationery store which sells legal forms, and all kinds of stationery. The Administrator says if those forms are sold to a lawyer who is using them in his business, that is not a retail sale, because the purpose of the buyer is not to consume them; it is to use them in his business.

Take a furniture store which sells furniture. It would not be a retail furniture store if it should sell a certain amount of furniture for office use to people who use the furniture in offices. That concept, to my mind, is utterly erroneous, and it has resulted in a steady encroachment against the retail establishment, until many retail establishments do not have the faintest idea whether or not they are to remain retail establishments and be exempt under the act.

There is another method by which there is a fairly steady encroachment. The original act provides under the heading "Exemptions":

(2) Any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.

What is intrastate commerce? We have a decision of the Supreme Court in Walling against Jacksonville Paper Co., involving a matter of wholesale, but the principle is the same. That decision was that if the consumer puts in the order and then the dealer orders the goods from outside the State, even though they stop at the warehouse on the way to the consumer, it is all an interstate sale; it is no longer an intrastate sale.

In other words, there is the tendency on the part of the Court to extend the theory of interstate commerce beyond the stopping point. When I was in college the universal judgment was that once the goods came to rest in a warehouse that ended the interstate commerce movement, but from there on they were in intrastate commerce. But under the decisions of the Court the view is gradually being extended that this interstate business is going right on down to the consumer if the goods have come from outside the State. Therefore, none of the retail establishments can be certain that their sales are any longer in intrastate commerce, if more than 50 percent of the goods involved come from outside the State. So we have had a steady encroachment on this exemption.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. TAFT. I yield to the Senator from Florida.

Mr. PEPPER. I respectfully call the attention of the able Senator to the language in the Roland case, which I read a moment ago. In that case it was the interpretation of the Supreme Court that the exemption of the retail establishment being specific in the law, there was no possibility of charging such establishment with the goods which came in from the outside, as having any influence upon their character. That is definitely set out in the Roland case.

Mr. TAFT. In the first place, I do not object to being accused of trying to reverse the Supreme Court. We are constantly reversing the Supreme Court. The distinguished Senator from Florida accepted an amendment this afternoon exempting ditch diggers of Colorado, which would reverse an opinion of the Supreme Court of the United States which held that ditch diggers in Colorado were not agricultural employees. The Senator from Florida joined in reversing that opinion this afternoon by accepting an amendment respecting those ditch diggers. That I believe was put into the bill as a committee amendment.

My objection is that the Supreme Court is extending the definition of interstate commerce to such a point that there is not going to remain any such thing as intrastate commerce. Whether that is so or not, or whether the Supreme Court is right or not—it may be entirely right—I think we have the function of deciding what we meant when we intended to exclude retail establishments in intrastate commerce. I think the Congress intended then to exclude intrastate commerce in that sense. Congress intended to take the position that retail sales are not the concern of the Federal Government. All the pending amendment does is to reaffirm what Congress did in 1938, as the distinguished junior Senator from Florida [Mr. HOLLAND] so graphically set forth in showing the intention of the authors of the act, of President Roosevelt, of the gentleman from New York, Representative CELLER, who is, I think, the author today of an amendment in the House of Representatives, similar to that of the Senator from Florida, which he has proposed in order that the situation may be cleared up. He himself, I think, was also the author of the original exemption provision in the act of 1938.

The senior Senator from Florida objected to the suggestion that besides having to be sales in accordance with the principles we have all recognized, the amendment imposed one additional condition, namely, that the sales must be "recognized as retail sales or services in the particular industry." The senior Senator from Florida says that would give the industries the right to decide the matter for themselves. It would not do so. Hardly an industry can be found in which the question of what is retail and what is wholesale has not been settled for years. It is a question of fact just as much as any other question of fact. It is a question of fact which we are perfectly able to determine.

Mr. President, there is not any discretion left to the industry. What is a retail sale in a particular industry is for the Administrator and the courts to determine.

Certainly the amendment provides a far more definite definition than the definition in existing law, which simply says that retail establishments shall be exempt.

Mr. President, I do not desire to burden the Senate. I will say, however, that I agree entirely with the Senator from Florida that it is our general understanding, and it is one which I am perfectly willing to stand by, that we do not extend the coverage of the act, certainly in any substantial respect, nor do we cut down the coverage of the act. We simply increase the rate from 45 cents to 75 cents an hour.

So far as the pending amendment is concerned, it is no more than a reaffirmation of the intention of Congress in 1938. Both the Senator from Missouri [Mr. DONNELL] and I, who filed the supplemental statement which will be found at the end of the report, felt very strongly that we were not in any way extending the exemption. We are simply reaffirming the position the Senate has taken heretofore.

I am inclined to agree with the Senator in the view that there is no reason to make exemptions, though a few have been made, that were not exemptions under the original law. I do not object to telephone exchanges having less than 750 subscribers being exempted under

the amendment. The growth in telephones since 1938 has been very close to 50 percent. So the figure of 750 is properly comparable to the figure 500 as it was 10 years ago. By that proposal I do not believe we are making any substantial additional exemption.

Mr. President, I submit to the Senate that we should not encourage and permit the gradual extension of the concept of interstate commerce to cover all retail establishments, to cover all service establishments such as laundries, or to cover all hotels. I may say that the present general counsel of the National Labor Relations Board, contrary to my opinion, claims that he can cover all hotels under the National Labor Relations Act. If we do not want to have the whole concept of local and intrastate commerce finally eliminated, then I believe we ought to adopt the amendment suggested by the distinguished junior Senator from Florida.

Mr. HOLLAND. Mr. President, I believe my colleague reserved 2 minutes. Does he wish to use them now?

Mr. PEPPER. I yield the 2 minutes to the majority leader, and he may use them at his pleasure.

Mr. HOLLAND. Mr. President, I have wearied the Senate too long already, but there are several points I should like to make in conclusion.

The VICE PRESIDENT. The junior Senator from Florida has 10 minutes.

Mr. HOLLAND. The first is with reference to a point ably made by my distinguished colleague, which if I understood him correctly—and I tried to take down his exact words—was, that if the opponents of the amendment prevail, if the proponents of the law without change prevail, and these are quotations from his statement, "the law remains settled and clear as it now is."

Mr. President, in such case it does remain as it now is, but I think my distinguished colleague strayed from the facts, as I understand them, when he referred to that as being a settled and clear status, because as I read the report and the recommendations of the Administrator of the wage and hour law, I find that apparently he feels that the situation is anything but settled and clear.

In this summary I shall reread two paragraphs from the recommendations of the Administrator:

In view of Supreme Court decisions on the subject—

Because of those, he is asking this change—

it is recommended that the Congress consider amending the Fair Labor Standards Act to remove doubt in application of the section 13 (a) (2) exemption for "any employee engaged in a retail or service establishment the greater part of whose sales or services is in intrastate commerce." By incorporation in the act of specific language similar to that used in the tests applied by the divisions in determining the eligibility of an establishment for the exemption, doubt raised about the application of the tests in varying situations would be removed and uniformity in administration of the act could be achieved.

The Administrator certainly recognizes that doubt exists, and that nonuniformity exists, and that there is anxiety on the part of all concerned because of the present cloudy picture which the Administrator portrays in his recommendation. It is admitted that the amendment does not square entirely with the recommendations of the Administrator. In my earlier remarks I have indicated the particulars in which it does not so square. But it does tend to meet certain specific recommendations of the Administrator, who finds the situation anything but settled and clear, as indicated by my distinguished colleague [Mr. PEPPER].

I read one further paragraph from the report of the Administrator:

The proposed amendment—

It will be seen that he proposes an amendment—

also would solve the problem illustrated by the situation of the farm implement dealers, a problem which applies also to such establishments as lumber dealers, hardware stores, or general stores, located in rural counties where nearly all of their customers are farmers.

These are not my words. This is from the report and recommendations of the Administrator:

In hundreds or even thousands of towns a position that the sale of goods used by a farmer in connection with his farming activity is counted against the 25 percent nonretail tolerance would be tantamount to saying that there are no exempt retail establishments in these rural communities. If the Congress wishes to adopt this view, it should be clearly stated in the statute. The Administrator does not believe it was intended.

There is not the slightest doubt that the Administrator himself is in great doubt as to whether any rural stores of any kind could technically be exempted under the Act and under the decisions as they now stand, based upon his interpretative rulings. He calls our attention clearly to the need for amendment, so clearly that I think it cannot be strongly or seriously contended that the act is settled and clear in its present condition.

The next point has to do with the 200,000. I do not know whether the number is 200,000 or 25,000, as apparently was thought at one time was the number. If it is 200,000, there is a better case for this amendment than there would be if the number were 25,000, because everyone who would be excluded by this amendment is excluded because he is now included under interpretations which depart from the provisions and objectives of the original law and of the original sponsors of the act. Two hundred thousand is no great number when we look at the total of our 20,000,000 who are affected. It is less than 1 percent, if my figuring is accurate. I do not know whether that number is right or wrong. Two weeks ago we tried to get an expression from the Administrator on the subject, and up until today we had not received an answer. Whether the number mentioned is right or wrong, it shows that a number, whether more or less, have been brought under the operations of the law who were not intended to be brought under the operations of the law by the objectives of the original sponsors and by the law which they thought was perfectly clear upon this subject.

One further point, and I shall conclude. My next point is with reference to hotels. I think it is wholly futile for any of us to feel or claim for a moment that hotels have not every reason to be anxious and apprehensive about the situation which now prevails, and which will apply to them in so much heavier degree, with so much greater hazard, when we raise the standard of the minimum wage to 75 cents, if that be done under the proposal incorporated in this bill. Why is that true? First, because of the general implications of the Roland decision and other similar decisions.

There are two other things which I should mention. Let us recall the illustration of the restaurant operating in the way which I indicated this afternoon, serving primarily a manufacturing establishment, or the personnel of that establishment, to whom its sales are made as individuals. In addition, the restaurant serves any members of the public who care to come in. The restaurant had no connection whatever, so far as its ownership, management, profit, or investment was concerned, with the manufacturing establishment. It has been held by the Administrator, in a decision upheld by the courts, that such a hotel comes within the purview of the law and is excluded from exemption. Furthermore, we have a peculiar situation under which there is great contention as to whether the jurisdiction of the National Labor Relations Board pertains to hotel labor. The question has been cause for dispute between learned counsel for the National Labor Relations Board and the majority of that board. The cause is a celebrated one. I think everyone knows of the wrangling which has been going on in connection with that subject. Everyone knows about the contention made by a great labor organization that hotel labor is included within the purview of the law, and is so included because of the interstate character of the operation of the hotel. If the business is interstate for that purpose, it is interstate for the purpose of application of this law. I think it is important, from the standpoint of protecting great industries which need this protection, and were never intended to be included within the purview of the operations of the law, to extend to them the protection which would be afforded by the operation of this amendment.

I close by reminding Senators that the States have shown their willingness to deal with the problem, and have made it crystal clear that it is a question which should be dealt with effectively on the local basis, and must be so dealt with. State after State has found it impossible to deal with some of these businesses on a State-wide basis. In one State there is a division into zones, with a certain treatment for the large cities, another for smaller cities, and still another for the very small communities. Each State, I think, has shown its unwillingness to have applied a 40-hour limitation. The legislature of every State

which has passed on this question knows that such businesses must operate for more than 40 hours a week. The habits of the community and the expectancy of the customers in dealing with this type of business require that the customers be taken care of on a 6-day basis rather than a 5-day basis.

The minimum wage limit fixed has followed the character, habits, and convictions of the communities and of the States which are concerned. The problem is dealt with so ably and in such a varied way as to exemplify the wisdom of the founding fathers, who kept this subject within the jurisdiction of the States, as well as the wisdom of Congress in 1938, when it very carefully retained this field within the jurisdiction of the several States. Congress realized how uniquely qualified the States were to deal, in a varied way, with this problem, each within its own confines.

Mr. President, I have one more point, and then I shall conclude. I have 1 minute more.

By the passage of this bill as it now stands we force upon literally tens of thousands of businesses in this Nation the necessity of complying with red tape and restrictions, and all kinds of comprehensive bookkeeping detail which otherwise would not be forced upon them, because they are all kept within the cloud of uncertainty as to whether or not the law applies to them.

Mr. President, there is no justice in that sort of thing. Regardless of what may be the decision of the Congress with reference to the enlargement of the wage, we should clarify the question of jurisdiction, and we should adopt this amendment.

The VICE PRESIDENT. The time of the Senator from Florida has expired.

The senior Senator from Florida has 2 minutes remaining.

Mr. PEPPER. Mr. President, I yield to the majority leader.

Mr. LUCAS. Mr. President, I have been greatly impressed with the fairness of the Committee on Labor and Public Welfare, which reported the minimum wage bill, in dealing with practically one question, namely, the increase in the wage rate from 40 to 75 cents an hour.

I have received many letters from my constituents in Illinois asking me to support this amendment or that amendment. I have told them that I hoped that no controversial amendments would be sponsored on the floor of the Senate, because we were trying to get through a minimum-wage law to increase the wage rate, and do only that one thing.

The able Senator from Ohio [Mr. TAFT] and the able Senator from Florida [Mr. PEPPER] agree that this is practically a reaffirmation of what was done in 1938. If the pending amendment is adopted, I undertake to say that as a result of this debate, regardless of what anyone may say, thousands of people will be relieved from the act as a result of the amendment. It will do exactly what the senior Senator from Florida [Mr. PEPPER] says with respect to the chaos and confusion which will exist in this country. The courts will be interpreting this act for many years to come.

Mr. President, I plead with the Senate to stand by the majority of the Committee on Labor and Public Welfare, which reported this bill on the theory that there was just one thing involved, namely, the increase of the wage rate from 40 to 75 cents an hour. Many amendments seeking additional coverage could have been attached to the bill. The result would have been interminable debate, because there is much to be said with respect to additional coverage for others who are involved in a wage-rate measure of this kind.

Mr. President, we should let the law remain as it is, with one exception, and that is to increase the rate to 75 cents an hour. At some later date all the other amendments, including the so-called clarifying amendments and the so-called additional-coverage amendments, can be fully debated; but let us stand by the committee at this particular time.

The VICE PRESIDENT. The time of the Senator has expired. All time has expired.

Mr. WHERRY. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hendrickson	Mundt
Anderson	Hickenlooper	Murray
Brewster	Hill	Myers
Bridges	Hoey	Neely
Butler	Holland	Pepper
Byrd	Humphrey	Robertson
Cain	Ives	Saltonstall
Capehart	Johnson, Tex.	Schoeppel
Chapman	Johnston, S. C.	Smith, Maine
Connally	Kem	Smith, N. J.
Cordon	Kerr	Sparkman
Donnell	Kilgore	Stennis
Douglas	Knowland	Taft
Dulles	Langer	Taylor
Eastland	Leahy	Thomas, Okla.
Ellender	Lucas	Thomas, Utah
Flanders	McCarthy	Thye
Frear	McClellan	Tobey
Fulbright	McFarland	Vandenberg
George	McKellar	Watkins
Gillette	McMahon	Wherry
Graham	Magnuson	Wiley
Green	Malone	Williams
Gurney	Martin	Young
Hayden	Millikin	

The VICE PRESIDENT. A quorum is present.

The question is on agreeing to the amendment offered by the junior Senator from Florida [Mr. HOLLAND], for himself and other Senators, to the text of the committee amendment.

Mr. AIKEN. Mr. President, I move to amend the amendment offered by the Senator from Florida and other Senators, in the following way: On page 2, in lines 2 and 3, to strike out the words "and is recognized as retail sales or services in the particular industry," and then properly to punctuate the sentence.

On this amendment to the Holland amendment, I ask for the yeas and nays.

The VICE PRESIDENT. Let the amendment to the amendment first be stated.

The LEGISLATIVE CLERK. In the Holland amendment, on page 2, in line 2, after the word "resale" it is proposed to strike out "and is recognized as retail sales or services in the particular industry," and to correct the punctuation.

Mr. HOLLAND. Mr. President——

The VICE PRESIDENT. For what purpose does the Senator from Florida rise?

Mr. HOLLAND. I make a point of order that the time has expired, under the unanimous-consent agreement, and the voting is now to take place on the amendment which has been debated, on which I am perfectly willing to yield, provided——

The VICE PRESIDENT. The point of order is overruled if it is made on the ground that the amendment offered by the Senator from Vermont to the Holland amendment is not in order. The amendment of the Senator from Vermont to the Holland amendment is an amendment in the first degree, inasmuch as the text of the bill has been accepted as the committee amendment. Therefore, the amendment offered by the Senator from Vermont to the Holland amendment is not an amendment in the second degree, but is an amendment in the first degree, and therefore is in order. But, under the unanimous-consent agreement, it cannot be debated.

Mr. WHERRY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. WHERRY. I am not at all interested in questioning the ruling, but I should like to ask the President of the Senate this question: Under the unanimous-consent agreement, when the hour of voting arrives—which in this case is 9:30 p. m.; and let me say that I am asking this question in order to have information in regard to future occasions—is an amendment in order to the amendment which is the subject of the unanimous-consent agreement?

The VICE PRESIDENT. Oh, yes; but no debate can occur.

Mr. WHERRY. But it is in order?

The VICE PRESIDENT. Yes; amendments to it are in order.

Mr. HOLLAND. Mr. President, I ask unanimous consent for the proponents and the opponents of the Aiken amendment to my amendment each to have 2 minutes to discuss the amendment to my amendment.

The VICE PRESIDENT. Is there objection?

Mr. LUCAS. Mr. President, of course the unanimous-consent agreement has been entered. If we are now to begin to have further unanimous-consent requests agreed to, I wonder how long we shall continue in that way. Some other Senator may subsequently request 5 minutes' additional time.

I do not object; but if we are going to begin to grant such further unanimous-consent requests, we may continue for a long period of time.

The VICE PRESIDENT. Of course, objection can always be made to such requests.

Mr. LUCAS. I understand.

The VICE PRESIDENT. Is there objection? The Chair hears none.

If the Senator from Vermont wishes to have 2 minutes, he is recognized.

Mr. AIKEN. Mr. President, I have moved to strike out the words "and is recognized as retail sales or services in the particular industry," as they appear on page 2, in lines 2 and 3, in the amendment offered by the Senator from Florida [Mr. HOLLAND] for himself and other Senators.

In my opinion and in the opinion of persons who understand retail law better than I do, those words constitute the joker in the amendment, and, if enacted into law, they would virtually permit an industry to determine for itself whether its sales should be considered as retail or wholesale. If these words are stricken out, I see no objection to the remainder of the amendment. But if these words remain in the Holland amendment—and, as I have said, I consider them to be the joker in the amendment, and I believe they would do something which we would not want to have done—then I think the Holland amendment should be defeated.

The VICE PRESIDENT. Does the Senator from Florida wish to be recognized for 2 minutes?

Mr. HOLLAND. Yes.

Mr. President, I object, for two reasons, to the adoption of the amendment offered by the Senator from Vermont to our amendment. First, if these words are stricken out that will necessitate a conference with the House of Representatives, because our amendment is drafted in the precise language that has already been incorporated in the House measure.

My second reason for objecting is that I think the Aiken amendment to my amendment is without foundation and without merit. There is no proper background against which to determine the meaning of "retail sales or services" without looking to see the meaning of the term "retail sales" or the term "retail services" in the particular industry which is affected. That already is implicit in the act we now have. When we talk about retail or service establishments, there must be a definition. Of course, that definition should properly be laid against the background of the understanding of the people affected by it, as to what constitutes retail services or retail sales.

So it seems to me that the entire approach of the Aiken amendment to my amendment flies in the face of the best interpretation. All of us know that the retail sale of coal and the retail sale of shoes are not made under the same standards. And so for different commodities, Mr. President, we have to find the definition which is understood by the people dealing in that industry; and if there is any more proper basis for it, I do not know what it is—to be determined, of course, by the Administrator and subject to the rule of the court in each particular case. There is no sounder basis than that for the determination of what a retail sale or a retail service means.

Mr. AIKEN. Mr. President, do I have a few seconds left.

The VICE PRESIDENT. The Senator has 2 seconds left.

Mr. AIKEN. Mr. President, the remarks of the Senator from Florida indicate to me now that the words of the amendment do mean much more than I understood from his remarks which were made before the Senate recessed for dinner. I think it is all the more important that these words be stricken from the amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from Vermont to the amendment offered by the Senator from Florida.

Mr. AIKEN. I ask for the yeas and nays.

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll.

Mr. SALTONSTALL (when his name was called). On this question I am paired with the junior Senator from Oregon [Mr. MORSE]. If he were present he would vote "yea." If I were permitted to vote, I should vote "nay." I withhold my vote.

The roll call was concluded.

Mr. MYERS. I announce that the Senator from New Mexico [Mr. CHAVEZ], the Senator from California [Mr. DOWNEY], the Senator from Idaho [Mr. MILLER], the Senators from Maryland [Mr. O'CONOR and Mr. TYDINGS], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Kentucky [Mr. WITHERS] are necessarily absent.

The Senator from Wyoming [Mr. HUNT] is absent by leave of the Senate on official business.

The Senator from Colorado [Mr. JOHNSON], the Senator from South Carolina [Mr. MAYBANK], the Senator from Nevada [Mr. MCCARRAN], and the Senator from Georgia [Mr. RUSSELL] are absent by leave of the Senate.

The Senator from Tennessee [Mr. KEFAUVER] is absent on official business.

The Senator from Louisiana [Mr. LONG] is absent on public business.

The Senator from New Mexico [Mr. CHAVEZ] is paired on this vote with the Senator from Maryland [Mr. TYDINGS]. If present and voting, the Senator from New Mexico would vote "yea," and the Senator from Maryland would vote "nay."

The Senator from Louisiana [Mr. LONG] is paired on this vote with the Senator from Georgia [Mr. RUSSELL]. If present and voting, the Senator from Louisiana would vote "yea," and the Senator from Georgia would vote "nay."

I announce further that if present and voting, the Senator from Maryland [Mr. O'CONOR] would vote "nay."

Mr. SALTONSTALL. I announce that the Senator from Connecticut [Mr. BALDWIN] is absent by leave of the Senate on official business.

The Senator from Ohio [Mr. BRICKER] and the Senator from Indiana [Mr. JENNER] are necessarily absent. If present and voting, the Senator from Ohio [Mr. BRICKER] would vote "nay."

The Senator from Michigan [Mr. FERGUSON] and the Senator from Massachusetts [Mr. LODGE] are absent by leave of the Senate. If present and voting, the Senator from Michigan [Mr. FERGUSON] would vote "nay."

The Senator from Oregon [Mr. MORSE] is absent on official business and his pair has been announced by the Senator from Massachusetts [Mr. SALTONSTALL].

The Senator from Montana [Mr. ECTON] and the Senator from Kansas [Mr. REED] are detained on official business.

The result was announced—yeas 24, nays 49, as follows:

YEAS—24

Aiken	Ives	Myers
Douglas	Kilgore	Neely
Flanders	Langer	Pepper
Graham	Leahy	Sparkman
Green	Lucas	Taylor
Hayden	McMahon	Thomas, Okla.
Hill	Magnuson	Thomas, Utah
Humphrey	Murray	Tobey

NAYS—49

Anderson	Gillette	Millikin
Brewster	Gurney	Mundt
Bridges	Hendrickson	Robertson
Butler	Hickenlooper	Schoeppel
Byrd	Hoey	Smith, Maine
Cain	Holland	Smith, N. J.
Capehart	Johnson, Tex.	Stennis
Chapman	Johnston, S. C.	Taft
Connally	Kem	Thye
Cordon	Kerr	Vandenberg
Donnell	Knowland	Watkins
Dulles	McCarthy	Wherry
Eastland	McClellan	Wiley
Ellender	McFarland	Williams
Frear	McKellar	Young
Fulbright	Malone	
George	Martin	

NOT VOTING—23

Baldwin	Johnson, Colo.	O'Conor
Bricker	Kefauver	O'Mahoney
Chavez	Lodge	Reed
Downey	Long	Russell
Ecton	McCarran	Saltonstall
Ferguson	Maybank	Tydings
Hunt	Miller	Withers
Jenner	Morse	

So Mr. AIKEN's amendment to Mr. HOLLAND's amendment was rejected.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the junior Senator from Florida.

Mr. WHERRY. I ask for the yeas and nays.

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll.

Mr. SALTONSTALL (when his name was called). On this question I am paired with the junior Senator from Oregon [Mr. MORSE]. If he were present and voting he would vote "nay." If I were permitted to vote I would vote "yea." I therefore withhold my vote.

The roll call was concluded.

Mr. MYERS. I announce that the Senator from New Mexico [Mr. CHAVEZ], the Senator from California [Mr. DOWNEY], the Senator from Idaho [Mr. MILLER], the Senators from Maryland [Mr. O'CONOR and Mr. TYDINGS], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Kentucky [Mr. WITHERS] are necessarily absent.

The Senator from Wyoming [Mr. HUNT] is absent by leave of the Senate on official business.

The Senator from Colorado [Mr. JOHNSON], the Senator from South Carolina [Mr. MAYBANK], the Senator from Nevada [Mr. MCCARRAN], and the Senator from Georgia [Mr. RUSSELL] are absent by leave of the Senate.

The Senator from Tennessee [Mr. KEFAUVER] is absent on official business.

The Senator from Louisiana [Mr. LONG] is absent on public business.

The Senator from New Mexico [Mr. CHAVEZ] is paired on this vote with the Senator from Maryland [Mr. TYDINGS]. If present and voting, the Senator from New Mexico would vote "nay," and the Senator from Maryland would vote "yea."

The Senator from Louisiana [Mr. LONG] is paired on this vote with the Senator from Georgia [Mr. RUSSELL]. If present and voting, the Senator from Louisiana would vote "nay," and the Senator from Georgia would vote "yea."

I announce further that if present and voting, the Senator from Maryland [Mr. O'CONOR] would vote "yea."

Mr. SALTONSTALL. I announce that the Senator from Connecticut [Mr. BALDWIN] is absent by leave of the Senate on official business.

The Senator from Ohio [Mr. BRICKER] and the Senator from Indiana [Mr. JENNER] are necessarily absent. If present and voting, the Senator from Ohio [Mr. BRICKER] would vote "yea."

The Senator from Michigan [Mr. FERGUSON] and the Senator from Massachusetts [Mr. LODGE] are absent by leave of the Senate. If present and voting, the Senator from Michigan [Mr. FERGUSON] would vote "yea."

The Senator from Oregon [Mr. MORSE] is absent on official business, and his pair has been announced by the Senator from Massachusetts [Mr. SALTONSTALL].

The Senator from Montana [Mr. ECTON] and the Senator from Kansas [Mr. REED] are detained on official business.

The result was announced—yeas 50, nays 23, as follows:

YEAS—50

Anderson	Gillette	Millikin
Brewster	Gurney	Mundt
Bridges	Hendrickson	Robertson
Butler	Hickenlooper	Schoeppel
Byrd	Hoey	Smith, Maine
Cain	Holland	Smith, N. J.
Capehart	Ives	Sparkman
Chapman	Johnson, Tex.	Stennis
Connally	Johnston, S. C.	Taft
Cordon	Kem	Thye
Donnell	Kerr	Vandenberg
Dulles	Knowland	Watkins
Eastland	McCarthy	Wherry
Ellender	McClellan	Wiley
Flanders	McFarland	Williams
Fulbright	Malone	Young
George	Martin	

NAYS—23

Aiken	Kilgore	Myers
Douglas	Langer	Neely
Frear	Leahy	Pepper
Graham	Lucas	Taylor
Green	McKellar	Thomas, Okla.
Hayden	McMahon	Thomas, Utah
Hill	Magnuson	Tobey
Humphrey	Murray	

NOT VOTING—23

Baldwin	Johnson, Colo.	O'Conor
Bricker	Kefauver	O'Mahoney
Chavez	Lodge	Reed
Downey	Long	Russell
Ecton	McCarran	Saltonstall
Ferguson	Maybank	Tydings
Hunt	Miller	Withers
Jenner	Morse	

So Mr. HOLLAND'S amendment was agreed to.

Mr. LUCAS. Mr. President, I think it was the general understanding of all Senators that after we voted on this amendment the Senate would take a recess until tomorrow. I should like to make an announcement, if I may, because I think it is rather important——

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. LUCAS. I yield to the Senator from Florida.

Mr. HOLLAND. Mr. President, I move that the Senate reconsider the vote by which the amendment was agreed to.

Mr. WHERRY. Mr. President, I move that that motion be laid on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Nebraska.

The motion to lay on the table was agreed to.

Mr. LUCAS. Mr. President, it is my understanding that there are five other amendments to the bill which are now pending, and it is my hope that we may be able to conclude action on those amendments tomorrow. If we can finish the amendments and vote on the bill tomorrow, the Senate will proceed to take 3-day recesses until a week from today, giving the Senators approximately a week to go home or to do anything they like, without attending sessions of the Senate. It is my understanding from the Senator from Florida and the Senator from Ohio that we can probably finish tomorrow. We shall meet at 11 o'clock in the morning and remain here until we do finish. If we cannot finish the bill, we shall have to return the following day. The highly controversial amendment is now out of the way, and I hope that we shall be able to conclude action on the bill by not later than tomorrow night at approximately this time.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. LUCAS. I yield.

Mr. WHERRY. Did I correctly understand the majority leader to say that the Senate would take a recess until a week from today? He meant Wednesday, did he not?

Mr. LUCAS. Yes.

Mr. WHERRY. So that the 3-day recess will begin on Wednesday, and the Senate will be in session again the following Wednesday. Is that correct?

Mr. LUCAS. That is correct.

Mr. TOBEY. Mr. President, will the Senator yield?

Mr. LUCAS. I yield to the Senator from New Hampshire.

Mr. TOBEY. Mr. President, the Senators are assembled here. There is quite a large group present. Why not remain and do some business and make assurance double sure?

Mr. LUCAS. It is perfectly agreeable to me if the Senators desire to continue with the bill. It was my understanding——

Mr. TOBEY. Mr. President, I ask unanimous consent that the Senate remain in session until midnight and make some progress with the bill.

Mr. LANGER. I object.

The VICE PRESIDENT. Objection is heard.

Mr. LANGER. Mr. President, will the Senator yield?

Mr. LUCAS. I yield to the Senator from North Dakota.

Mr. LANGER. Mr. President, I ask unanimous consent that the Senate meet tomorrow morning at 6 o'clock and work right on through. Farmers go to work early in the morning and work until late at night.

Mr. McCLELLAN. I object.

The VICE PRESIDENT. Objection is heard.

Mr. LUCAS. Mr. President, it is my understanding that the Senator from Delaware [Mr. WILLIAMS] desires to address the Senate a few moments.

Mr. WILLIAMS. I shall take a very few minutes.

Mr. LUCAS. I yield the floor. I am willing to stay here until the Senator from Delaware finishes his speech. There will be no votes, and all Senators who desire to go home may do so.

IRREGULARITIES IN ADMINISTRATION OF WAR FOOD ORDER 119 ON THE DELMARVA PENINSULA

Mr. WILLIAMS. Mr. President, yesterday I placed in the RECORD the summary of the investigation of certain irregularities in the administration of WFO 119 on the Delmarva Peninsula.

Mr. Clifford W. Shedd, Deputy War Food Administrator, in a statement issued to the press this morning, categorically denied my charges on two points: First, he stated that to the best of his knowledge neither he nor any of his employees had any part in the irregular handling of the paper work relating to the movement of poultry; and second, Mr. Shedd said, "The WFA had nothing to do with the price that the farmer received for his poultry or the price the Quartermaster Corps paid the processor for the finished product."

In order to refresh Mr. Shedd's memory on the first part of his denial, I shall quote directly from the reports of the investigation. This investigation was conducted and reports prepared by the Office of Investigatory Services, Compliance Investigation Division of the War Food Administration, New York, N. Y. Copies of these reports are now in the files of the Department.

First, I quote from pages 41 and 42 of file No. 4–36, dated October 9, 1945, covering the following days of the investigation: May 14–16, 28–30; June 1, 4–8, 11–14, 19; July 6, 16, 17, 20, 23, and 28, 1945. This report was prepared by Special Agent Harold Mesibov and approved by Special Agent Robert J. Duff. I quote:

> Special Agents Foster, Penn, Ploff, Fitzpatrick, and reporting agent, on June 11, 12, 13, and 14, 1945, at the office of the Deputy Administrator of WFO 119, Dover, Del., examined all of the releases and applications made available by Miss Matthews, and prepared summarizations in the names of each separate buyer and hauler of the different releases issued to them.
>
> There is annexed to this report and marked "Exhibit 7," a chart setting forth the authorization numbers of the respective buyers and haulers to whom releases were issued after March 1, 1945, the approximate date when the application form was first required; the name and address of the buyer or hauler;

and the number of releases either supported by or issued without growers' applications.

It should be noted that of a total of 2,762 releases issued by Shedd's office, only 900 or slightly less than one-third of the said releases were supported by growers' applications.

These files contain conclusive proof that in many instances this poultry which was leaving the peninsula on improper certificates carried the forged signatures of the Delmarva farmers. As evidence of this statement, I quote from file No. 119–59, dated August 14, 1945, covering the following days of investigation: May 29–31, June 1, 4, 5, 8, 15, 18, 19, 25, July 7, 18, 1945. This report was prepared under the supervision of special agent Harold Mesibov and approved by the special agent in charge, Robert J. Duff. The report specifically links Clifford W. Shedd with the irregularities, the summary of which is found on pages 1 and 2. I quote:

Investigation disclosed that Polin Poultry Co., on May 28 and 29, 1945, moved five truckloads of live poultry out of the Delmarva area on the strength of false certifications, executed at point of area exit, that the poultry was to be delivered to authorized Army processing plants. All of these shipments were actually delivered to live poultry markets for resale in civilian channels.

Each of the drivers of the foregoing trucks advised that these deliveries were upon instructions from Howard Polin and that they did not have knowledge of the contents of either the manifests accompanying the trucks or the certificates they signed at the point of exit for inspectors of the War Food Administration.

David Polin stated that the false manifests and certifications were a device resorted to with the full knowledge and approval of Clifford W. Shedd, Deputy Administrator, War Food Order No. 119, to facilitate the movement to civilian channels of poultry, which could not be handled by authorized processors in the area. Polin also stated that this scheme, the purpose of which was to avoid misunderstanding between the drivers and Administration inspectors at the area exit, was resorted to after Shedd obtained blanket permission from Gordon W. Sprague, Administrator, War Food Order No. 119, to release poultry already loaded which the processing plants were not able to handle, and because the late evening hour prevented Shedd from gaining access to his office in the Post Office Building in order to prepare the necessary releases.

Exhibits 1, 2, and 3 attached to report WFO 119–59 comprise the releases of three of these loads of poultry moving from the premises of Raymond Hitch, Salisbury, Md., and on these releases it is stated that the poultry was moving, one load each to Paramount Poultry Co., Philadelphia, Pa., Quaker City Poultry Co., Philadelphia, Pa., and to Swift & Co., Palmer, Mass.

Exhibits 4 and 5 attached to the same report are copies of releases for two loads of poultry moving from the premises of Layfield Bunting, with addresses at Selbyville, Del., and Bishop, Md., both loads supposedly consigned to the Quaker City Poultry Co., Philadelphia, Pa.

Raymond Hitch, poultry grower, Fruitland, Md., on June 19, 1945, furnished Special Agent Ploff with a signed statement, a copy of which can be found on pages 27 and 28 of file WFO 119–59, in which Mr. Hitch not only denies signing the certificates for his three loads, but also denies selling the poultry to the Polin Poultry Co.

I ask unanimous consent that his statement be printed at this point in the RECORD.

The VICE PRESIDENT. Is there objection?

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

SNOW HILL, MD., *June 19, 1945.*

I, Raymond Hitch, make the following statement to Robert M. Ploff, who has identified himself to me as a Special Agent of the Office of Investigatory Services, War Food Administration, knowing that this statement may be used in evidence.

I am 51 years of age, married, a citizen of the United States of America by birth, and reside at Fruitland, Md. I own and operate a poultry farm at the same place. I have been in this business for approximately 2 years.

On May 28, 1945, 2 trucks belonging to the Polin Poultry Co., Selbyville, Del., came to my farm and picked up 2 loads of chickens. There were approximately 9,000 chickens in this crop. These chickens had been contracted for by the Swift & Co., that they would pick up these 2 loads of poultry on May 28, 1945.

I was not home when the Polin trucks arrived and I was told by my wife later that day that the chickens had been picked up by the Polin Poultry Co. I was under the impression that Polin was acting as a hauler for Swift & Co.

I was surprised to receive a check from the Polin Poultry Co. about a week later in payment for the two loads of poultry. I was under the impression that I would receive a check from Swift & Co.

Neither my wife or myself ever signed an application for release of these chickens. We were both under the impression that they were being taken to the Swift & Co. plant at Salisbury. I do not know where the two loads of chickens actually went. I have never met anyone connected with the Polin Poultry Co.

If these two loads of poultry left the peninsula on a release, they did so without my knowledge.

I have read the above statement consisting of three pages, have signed each page, and it is the truth to the best of my knowledge.

RAYMOND A. HITCH.

Witness:

ROBERT M. PLOFF,
Special agent.

Mr. WILLIAMS. Mr. President, in an interview with Special Agent Ploff, details of which are found on page 28 of Report WFO 119–59, Mr. Bunting denied having signed applications for releases of the two loads of poultry which went out in his name.

On page 1 of the same report we find that in speaking of the transaction involving these five loads of poultry, Mr. Polin stated that the false manifests and certifications were a device resorted to with the full knowledge and approval of Clifford W. Shedd, Deputy Administrator, War Food Order No. 119, to facilitate the movement to civilian channels of poultry, which could not be handled by authorized processors in the area.

Nor are these all of the examples given in these reports of certificates which were issued carrying the forged signatures of our farmers. For instance, in file No. WFO 119–42, dated September 9, 1945, beginning on page 2, we find a list of farmers' names and certificate numbers which were issued under their names without their knowledge. I ask unanimous consent that the list be printed in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Release No.	Grower	Address
P1–109.34, P1–109.18, P1–109.19.	Harvey O. Bunting.	Dagsboro, Del.
P1–109.35, P1–109.36, P1–109.37.	William Massey	Georgetown, Del.
P1–109.30, P1–109.34.	Frederick M. Hall (also Fred Hall).	Willards, Md.
P1–109.42, P1–109.44, P1–109.45.	Dora Evans	Roxana, Del.
P1–109.43, P1–109.44.	Donald Evans	Selbyville, Del.
P1–109.47	James C. Hastings	Sharptown, Md.
P1–109.37, P1–109.38.	Alfred P. Richardson.	Redden, Del.
P1–109.76	Charles Steele	Dagsboro, Del.
P1–109.31, P1–109.33, P1–109.46.	John H. Tyre	Selbyville, Del.
P1–109.16	Lester C. Newton	Bridgeville, Del.
P1–109.23, P1–109.24, P1–109.25.	Lorenzo B. Brittingham.	Laurel, Del.
P1–109.26, P1–109.27, P1–109.28, P1–109.29.	Henry Graves	Georgetown, Del.
P1–109.10	Clarence Rayne	Frankford, Del.
P1–109.6	Madison Gray	Selbyville, Del.
P1–109.48	Harvey West	Millsboro, Del.
P1–109.17	Fred Dodd	Stockley, Del.
P1–20.78	Elwood Wright	Millsboro, Del.

Mr. WILLIAMS. Mr. President, attached to this same file, WFO 119–42, identified as exhibit Nos. 1 to 28, are copies of these original releases, along with the statement of individual farmers denying the signatures, and also included in this file on page 29 under date of June 26, 1945, is a statement on the part of the operator responsible, admitting the forgeries in these particular cases.

If Mr. Shedd needs any further evidence as to irregularities in his office, I refer him to file No. 4–37 dated August 23, 1945, in which detailed accounts are given of two other instances in which the signatures of poultry growers were forged to applications for the release of poultry without the knowledge or consent of the growers. Once again in this report is the confession of the individual responsible for the forgeries, containing a charge that the forgeries were executed with the knowledge of an official of the Dover office and one of Mr. Shedd's subordinates.

The other exception which Mr. Shedd made to my statement was to the effect that the WFA had nothing to do with the price that the farmer received for his poultry or that the price the Quartermaster General paid the processors for the finished product. As evidence that Mr. Shedd is wrong in that statement, I ask unanimous consent to have inserted in the RECORD at this point a letter addressed to Miss Joan C. Warner, secretary in my office, who has been assembling this information, under date of June 27, 1949, and signed by Lt. Col. W. E. Barksdale, Supply Division, QMC.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE ARMY,
OFFICE OF THE QUARTERMASTER GENERAL,
Washington, D. C., June 27, 1949.

Miss JOAN C. WARNER,
Care of Hon. John J. Williams,
United States Senate.

DEAR MISS WARNER: Reference is made to our telephonic conversation of June 23. This office had previously been contacted regarding War Food Administration Order 119, which called for 100-percent set-aside of poultry in 1944 or 1945, particularly with reference to the Del Mar area.

Mr. David L. Hume, Chief of the Poultry Section, Headquarters, Quartermaster Market Center System, Chicago, Ill., was contacted on June 23. The following is quoted from his teletype message:

"To the best of our knowledge, all poultry purchased under WFO 119 by the market center system was at applicable maximum OPA prices. It should be pointed out that in 1944 and 1945, technically, the matter of ceiling prices was the responsibility of the then OPA and the vendors. Final responsibility as to the interpretation of OPA regulations rested with that agency and the seller. We do not believe that WFO 119 mentioned price; it was vendor's responsibility to offer poultry to the Quartermaster market centers and also his responsibility to comply with the then regulations governing prices. Further, WFO 119 was administered by the War Food Administrator. The Quartermaster Corps was only an authorized buyer under the terms of the order.

"To answer your question in terms of legal validity would require an audit of thousands of old records and the services of an expert OPA price auditor."

Also quoted for your information is a special provision which was included in the contract in connection with procurements under WFO 119 titled "Contract provision in poultry contracts incident to WFO 119":

"The contractor represents that the contract price stated on the first page hereof is based upon an estimated price paid to the producer as shown on the first page of this contract for live chickens to be processed hereunder.

"In the event and to the extent that the actual price paid to the producer of live chickens purchased for the performance of this contract is less than such estimated price, the contract shall be reduced by the same number of cents or fraction thereof, per pound, that the actual price to the producer of such live chickens is less than the estimated price to the producer.

"Demand for such reduction may be made in writing by contracting officer any time until 60 days after the conclusion or termination of this contract."

It is hoped that the above information may be of some value to you. If we can be of further assistance do not hesitate to call on us.

Sincerely yours,

W. E. BARKSDALE,
Lieutenant Colonel, Quartermaster Corps, Supply Division.

Mr. WILLIAMS. Mr. President, this letter specifically states that there was a contract provision in poultry contracts incident to WFO 119, which reads as follows:

In the event and to the extent that the actual price paid to the producer of live chickens purchased for the performance of this contract is less than such estimated price, the contract shall be reduced by the same number of cents or fraction thereof, per pound.

This letter also states that WFO 119 was administered by the War Food Administrator and the Quartermaster Corps was only an authorized buyer under the terms of the order. Whether the War Food Administration or the Quartermaster Corps was responsible for the enforcement of this provision is beside the point; the fact remains the provision was ignored and the farmers suffered substantial losses as a result.

Mr. Shedd cannot dispute that fact.

I can only repeat what I said yesterday, that it is a rank miscarriage of justice to have allowed the cloud of suspicion to remain on the names of these farmers of the Delmarva Peninsula when all this time the Department had in its possession information which would have completely exonerated them from any blame.

Mr. FREAR. Mr. President, I should like to associate myself with the remarks just made by the distinguished senior Senator from Delaware, as well as with the remarks he made yesterday, as they are found on pages 12430–12431 of the RECORD.

I also should like to congratulate the Senator for the tireless effort he has put forward in behalf of the broiler growers of Delaware. He has made a wonderful contribution, and I am sure that his remarks and the evidence he has submitted amply refute the statements contained in the article in the Wilmington newspaper this morning.

Mr. WILLIAMS. I thank the junior Senator from Delaware. I may say that he has worked just as hard on this problem as I have.

MINIMUM WAGE STANDARD—AMENDMENT

Mr. HOEY submitted an amendment intended to be proposed by him to the bill (S. 653) to provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes, which was ordered to lie on the table and to be printed.

RECESS

Mr. LUCAS. Mr. President, I move that the Senate stand in recess until 11 o'clock a. m. tomorrow.

The motion was agreed to; and (at 10 o'clock and 7 minutes p. m.) the Senate took a recess until tomorrow, August 31, 1949, at 11 o'clock a. m.

NOMINATIONS

Executive nominations received by the Senate August 30 (legislative day of June 2), 1949:

IN THE AIR FORCE

The following-named officers for promotion in the United States Air Force under the provisions of section 107 of the Army-Navy Nurses Act of 1947. These officers have been found physically and professionally qualified as required by law:

To be captains, Air Force Nurse Corps

Bean, Catherine Barbara, AN1378.
Christman, Florence M., AN1098.
Cook, Ruby, AN754.
Easterling, Elsie F., AN1093.
Erdmann, Marjorie Bertha, AN1675.
Flynn, Margaret Cecelia, AN1382.
Hays, Helen Marie, AN750.
Hodgson, Maralee Ruth, AN1380.
Hovatter, Velma Arizona, AN920.
Kruger, Ruth A., AN1387.
Lang, Mildred D., AN1585.
Levy, Marietta, AN1384.
Linhares, Alice M., AN912.
Miller, Irene Ethel, AN1581.
Murphy, Mary Cecelia, AN908.
Quintini, Audrae A., AN1395.
Rydzewski, Helen, AN1729.

To be captains, Women's Medical Specialists Corps

Beck, Mary Frances, AJ49.
Folmar, Evelyn, AR10079.

The following-named officers for promotion in the United States Air Force under the provisions of sections 502 and 509 of the Officer Personnel Act of 1947. Those officers have been found physically qualified as required by law:

To be captains, Medical Service Corps

Cook, Paul Marvin, 19503A.
Delahunt, John Clark, 19509A.
Horton, Russell Ervin, 19501A.
Howell, Louis Grady, 19500A.
Manrow, William Edward, 19504A.
Nicholson, Guy Christopher, 19506A.
Powell, Dudley Forbes, 19507A.
Rohles, Frederick Henry, Jr., 19505A.
Smith, Stuart Springer, 19502A.
Sykes, Edward George, 19508A.

To be major, Chaplains

Pierce, Palmer Phillippi, 18759A.

The following-named officers for promotion in the United States Air Force under the provisions of sections 502 and 508 of the Officer Personnel Act of 1947. Those officers whose names are preceded by the symbol (×) are subject to examination required by law. All others have been examined and found physically qualified for promotion:

To be first lieutenants, United States Air Force

Blanton, William Jennings, 17553A.
Bunn, DeWitt Relyea, 17557A.
Burkett, Daniel Lee, 17571A.
×Maurer, Lyle Eugene, 17554A.
McCurdy, Norman Roy, 17556A.
Rhoads, William Clarence, 17555A.
Robinson, Leroy Buddie, 17573A.
Roy, Carl William, 17572A.
×Smith, Walter Aloyusius, Jr., 17574A.

NOTE.—These officers complete the required years' service for promotion purposes during July through December. Dates of rank will be determined by the Secretary of the Air Force.

IN THE NAVY

Rear Adm. John W. Roper, United States Navy, to be Chief of the Bureau of Naval Personnel and Chief of Naval Personnel in the Department of the Navy for a term of 4 years.

Rear Adm. Edwin D. Foster, Supply Corps, United States Navy, to have the grade, rank, pay, and allowances of a vice admiral while serving under a Presidential designation as Chief of Naval Material.

Rear Adm. Charles W. Fox, Supply Corps, United States Navy, to be Paymaster General and Chief of the Bureau of Supplies and Accounts in the Department of the Navy, with the rank of rear admiral, for a term of 4 years.

Rear Adm. Thomas L. Sprague, United States Navy, to have the grade, rank, pay, and allowances of a vice admiral while serving under a Presidential designation as Commander, Air Force, United States Pacific Fleet.

IN THE MARINE CORPS

The following-named citizens (civilian college graduates) for permanent appointment to the grade of second lieutenant in the Marine Corps:

Ernest B. Altekruse, a citizen of Indiana.
Maurice C. Ashley, Jr., a citizen of New York.
John R. Dickson, a citizen of New York.
George E. Hayward, a citizen of New York.

The following-named enlisted men for permanent appointment to the grade of second lieutenant in the Marine Corps:

Raymond L. Barrie, Jr.	Richard R. Miller
Robert J. Barton	William Morse, Jr.
Henry A. Commiskey	Pierre D. Reissner, Jr.
John F. Conroy	"S" "E" Sansing
Robert H. Corbet	Charles B. Sturgell
Thomas E. Driscoll	Leonard C. Taft
Francis A. Gore, Jr.	Gerald G. Tidwell
Harold A. Hatch	Thomas W. Turner
Miles "M" Hoover, Jr.	Robert "H" White
James H. MacLean	James F Wolfe, Jr.
Max A. Merritt	

The following-named enlisted men (meritorious noncommissioned officers) for permanent appointment to the grade of second lieutenant in the Marine Corps:

Derrell C. Briden	Raymond C. Paulson
Harold L. Dawe, Jr.	Charles R. Petty
Robert D. Dern	Warren C. Sherman
Wiley J. Grigsby, Jr.	Robert W. Taylor
Charles H. Opfar, Jr.	

HOUSE OF REPRESENTATIVES

TUESDAY, AUGUST 30, 1949

The House met at 12 o'clock noon, and was called to order by the Speaker pro tempore [Mr. COX].

Rev. Frank L. Snyder, pastor of the Clarendon Baptist Church, Arlington, Va., offered the following prayer:

Eternal God, our Heavenly Father, we pray that the Holy Spirit shall work in the mind and heart of every citizen of our Nation; work in all of us, we beseech Thee, from the humblest post of duty to the highest position of responsibility, that which is Thy will. Help us to fully realize that we can labor together in serving our generation only when our Lord, who always went about doing good, leads us.

Teach us, we pray, that Thou art the Lord of our lives, the Ruler of our country, and the sovereign God of all nations. And since Thou shalt bring every work into judgment, of individuals and of nations, whether it be good or bad, give us all the needed grace to do justice, love mercy, and to walk humbly with Thee, our God. In the name of the Judge of all the earth, we pray. Amen.

The Journal of the proceedings of Friday, August 26, 1949, was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Carrell, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H. R. 225. An act to repeal section 460 of the act of March 3, 1899 (30 Stat. 1336), as amended, providing for certain license taxes in the Territory of Alaska;

H. R. 632. An act for the relief of John E. Burns;

H. R. 807. An act for the relief of Chattooga County, Ga;

H. R. 1065. An act for the relief of the estate of James Lander Thomas;

H. R. 1132. An act for the relief of Mabel H. Slocum;

H. R. 1446. An act for the relief of Conrad L. Wirth;

H. R. 1631. An act for the relief of John J. O'Mara;

H. R. 1701. An act for the relief of Mrs. Vesta Meinn and Mrs. Edna Williams;

H. R. 1790. An act to restore certain land in Alaska to the public domain and to authorize its sale to Ford J. Dale, of Fairbanks, Alaska;

H. R. 1792. An act for the relief of Charles E. Ader;

H. R. 1979. An act for the relief of Soo Hoo Yet Tuck;

H. R. 2091. An act for the relief of Jack McCollum;

H. R. 2170. An act authorizing changes in the classification of Crow Indians;

H. R. 2471. An act for the relief of Walt W. Rostow;

H. R. 2475. An act to authorize and direct the Secretary of the Interior to sell to Albert M. Lewis, Jr., certain land in the State of Florida;

H. R. 2594. An act for the relief of Grace L. Elser;

H. R. 2628. An act for the relief of Auldon Albert Aiken;

H. R. 2702. An act to authorize the Secretary of the Army to convey by quitclaim deed certain mineral rights in certain lands situated in the State of Oklahoma to Alfred A. Drummond and Addie G. Drummond;

H. R. 2706. An act authorizing the issuance of a patent in fee to Susie Larvie Dillon;

H. R. 2920. An act authorizing the issuance of a patent in fee to George Swift Horse;

H. R. 3071. An act to authorize the Secretary of the Army to purchase certain property in Morgan County;

H. R. 3197. An act relating to the sale of the old Louisville Marine Hospital, Jefferson County, Ky.;

H. R. 3383. An act to provide that extra compensation for night work paid officers and employees of the United States shall be computed on the basis of either standard or daylight saving time;

H. R. 3478. An act to extend the time for completing the construction of a bridge across the Mississippi River at or near a point between Delmar Boulevard and Cole Street in the city of St. Louis, Mo., and a point opposite thereto in the city of East St. Louis, Ill.;

H. R. 3589. An act to convey to the city of Miles City, State of Montana, certain lands in Custer County, Mont., for use as an industrial site;

H. R. 3637. An act to permit the sending of braille writers to or from the blind at the same rates as provided for their transportation for repair purposes;

H. R. 3665. An act for the relief of Mrs. Josephine Wagnon Walker;

H. R. 3667. An act authorizing the Secretary of the Interior to issue a patent in fee to Lenora Farwell Fritzler;

H. R. 3768. An act for the relief of Mrs. Justa G. Vda. de Guido, Belen de Guido, Mulia de Guido, and Oscar de Guido;

H. R. 3803. An act for the relief of Mrs. Mary L. W. Dawson;

H. R. 3829. An act to provide assistance for local school agencies in providing educational opportunities for children on Federal reservations or in defense areas, and for other purposes;

H. R. 3837. An act for the relief of Annie Balaz;

H. R. 3881. An act to provide for the use of the State course of study in schools operated by the Bureau of Indian Affairs on Indian reservations in South Dakota when requested by a majority vote of the parents of the students enrolled therein;

H. R. 4026. An act relating to the exchange of certain private and Federal properties within the authorized boundaries of Acadia National Park, in the State of Maine, and for other purposes;

H. R. 4073. An act to provide for the conveyance to the State of New York of certain historic property situated within Fort Niagara State Park, and for other purposes;

H. R. 4208. An act to add certain surplus land to Petersburg National Military Park, Va., to define the boundaries thereof, and for other purposes;

H. R. 4254. An act authorizing the Secretary of the Interior to issue a patent in fee to Sidney Blackhair;

H. R. 4688. An act to ratify and confirm Act 4 of the Session Laws of Hawaii, 1949, extending the time within which revenue bonds may be issued and delivered under chapter 118, Revised Laws of Hawaii, 1945;

H. R. 5155. An act for the relief of Francesca Lucareni, a minor;

H. R. 5160. An act for the relief of Mrs. Giustina Schiano Lomoriello;

H. R. 5205. An act to quitclaim certain property in Enid, Okla., to H. B. Bass;

H. R. 5207. An act to amend section 50 of the Organic Act of Puerto Rico;

H. R. 5390. An act to authorize the Secretary of the Interior to exchange certain Navajo tribal Indian land for certain Utah State land;

H. R. 5535. An act to amend the Philippine Rehabilitation Act of 1946;

H. R. 5620. An act permitting the use, for public purposes, of certain land in Hot Springs, N. Mex.;

H. R. 5929. An act to amend the Army and Air Force Vitalization and Retirement Equalization Act of 1948;

H. J. Res. 281. Joint resolution to authorize the President to issue posthumously to the late John Sidney McCain, vice admiral, United States Navy, a commission as admiral, United States Navy, and for other purposes; and

H. J. Res. 328. Joint resolution to authorize the Administrator of Civil Aeronautics to undertake a project under the Federal Airport Act for the development and improvement of Logan International Airport at Boston, Mass., during the fiscal year 1950.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H. R. 160. An act to amend section 801 of the Federal Food, Drug and Cosmetic Act, as amended;

H. R. 734. An act for the relief of Curtis R. Enos;

H. R. 1437. An act to authorize the composition of the Army of the United States and the Air Force of the United States, and for other purposes;

H. R. 1620. An act for the relief of Robert E. Bridge and Leslie E. Ensign;

H. R. 1694. An act to provide for the return of rehabilitation and betterment of costs of Federal reclamation projects;

H. R. 1746. An act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes;

H. R. 1824. An act to amend the act of July 23, 1947 (61 Stat. 409);

H. R. 1976. An act to authorize the sale of certain allotted inherited land on the Flathead Indian Reservation, Mont.;

H. R. 2517. An act directing the Secretary of the Interior to convey certain land to Palm Beach County, Fla.;

H. R. 3616. An act authorizing the issuance of a patent in fee to Lulu Two Spears Iron Bird;

H. R. 3618. An act for the relief of the legal guardian of Marcia Moss Carroll, a minor, and Charles P. Carroll;

H. R. 3826. An act to amend the act of January 16, 1883, an act to regulate and improve the civil service of the United States;

H. R. 3851. An act to amend Public Law 289, Eightieth Congress, with respect to surplus airport property and to provide for the transfer of compliance functions with relation to such property;

H. R. 3886. An act authorizing the Secretary of the Interior to issue a patent in fee to Jeanette Pearl Burns;